

**SUBMISSIONS TO THE UN CLCS IN CASES OF
DISPUTED AND UNDISPUTED MARITIME BOUNDARY DELIMITATIONS
OR OTHER UNRESOLVED LAND OR MARITIME DISPUTES
OF DEVELOPING STATES**

by Prof. Dr. Barbara Kwiatkowska

Farewell Lecture of Prof. B. Kwiatkowska, NILOS Deputy Director 1985-2009, held at the Faculty of Law, Economics & Governance - School of Law, Utrecht University on 9 December 2011. Prof. Kwiatkowska is grateful to School of Law's Head Prof. Ige F. Dekker and NILOS Director Prof. Alfred H.A. Soons for their gracious formal Speeches and to Prof. Albert W. Koers and Terry Gill for their heartwarming informal Speeches during her celebration.

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Introduction

Mijnheer de Rector Magnificus, Waarde Collegae, Geachte Toehorders,

In view of circumstances which most of you appreciate, I took a liberty of moving my brief words of thanks from the end into the beginning of my Valedictory Lecture - Afscheidsrede, which given our hope that I continue to work, could perhaps rather be called a Lecture on the occasion of 27 Years at NILOS. If we took account of my first 10 years in Poland and 4 years at Universities of Tilburg and Maastricht, it would be a Lecture on the occasion of 41 Years with the UNCLOS as a part of the global system of peace and security.

As regards my words of thanks, let me start from assuring You that it has been my distinct pleasure to work at this Faculty at NILOS for the past over 27 years with Professor Fred Soons, of whom I had a privilege to be Deputy Director in the years 1985-2009, and with Erik Molenaar, Harm Dotinga and Alex Oude Elferink. We brought NILOS to the status of *centre of excellence* in ocean affairs worldwide by two decades of our joint publication of *NILOS Yearbook of International Organizations and the Law of the Sea*, and by our active participation in the Rhodes Oceans Academy and the International Law Association (ILA) which was stimulated by Professor Soons' ILA Directorship of Studies, and by our numerous and well known publications, including our joint contributions to Noordwijk aan Zee Conference, to the 2005 London Conference and more recently to the leading international legal Journal that marked 25th UNCLOS Anniversary.

It has always been a pleasure to work as well with younger NILOS staff, partly my students, including Yoshi, Patricia, Sarah, Veronika, Pieter, Bettina, Petra, Youri, Jessica and Irina. Petra and Bettina have in fact meanwhile joined Fred, Erik and Alex in forming core of NILOS, which Harm after 15 years recently left, while Sarah has grown to valued researcher in the prestigious Lauterpacht Centre at the University of Cambridge in England.

My appreciation for their friendship and variety of important arrangements goes, moreover, chronologically to:

- * former Director Frans Alting von Geusau of John F. Kennedy Institute at Tilburg Faculty of Law,
- * former SIM Director Kees Flinterman, as succeeded by Prof. Jenny Goldschmidt,
- * inaugural NILOS Director and former REBO Dean Albert Koers who launched NILOS research and teaching in Southeast Asia and who recently reappeared together with Prof. Jaspers in illuminating Koers Commission concerning REBO Research Evaluation,
- * former REBO Dean Adriaan Dorresteyn,
- * former and current Netherlands Legal Advisers Hans Lammers and Liesbeth Lijnzaad of Ministry of Foreign Affairs,
- * former and current Publishing Directors of International Law Annebeth Rosenboom, Hans van der Meij and Ingeborg van der Laan of Martinus Nijhoff,
- * former and current Voorzitters Vakgroep, Professors Sacha Prehal, Teun Jaspers and Frans Pennings,
- * former and current Vakgroep Managers Wim Welling, Anita Verdonk, Jan van der Stelt and Pia Teeuw, of whom Anita and Jan continue in important functions at Janskerkhof 3,
- * Director Utrechts Universiteitsfonds Marteen Vervaat and Satish Sewraj and all their predecessors involved in my longstanding appointment as bijzondere hoogleraar

Internationaal Recht van de Zee,

* current REBO Dean Professor Henk Kummeling and his Vice-Dean and the Head of our Law School - Professor Ige Dekker, as well as Director of REBO Personnel - Wim de Smidt and Annet de Vries.

Ige Dekker has also remained one of our best Volkenrecht friends, who apart from Fred Soons, still include Terry Gill and his prominent *Handbook of the International Law of Military Operations*, Eric Meijer and his *International Journal of Conflict and Security Law*, Oliver Ribbelink, Antoinette Hilderink, Cedric Ryngaert, who just published with Ige Dekker their *Immunity of Int. Organizations* and in the past, among others - Wouter Werner, Andre Nollkaemper, Bibi van Ginkel, Arie Trouwborst and Kees Roelofsen, who has recently been invited by Professor Soons to preparation - together with Professors Koskenniemi, Gill and Meijer - of the 300 Years of Utrecht Peace Treaties forthcoming in September 2013. It has indeed been as stimulating as rewarding to be all those years a part of this dynamic group.

Turning now to wetenschappelijk deel van mijn Afscheidsrede I wish to note that Judicial Leadership in peaceful resolution of law of the sea related disputes, as a part of global peace and security and as a part of general international law, has since almost 100 years been resting with the principal judicial organ of the United Nations - International Court of Justice (ICJ-PCIJ) and the Permanent Court of Arbitration (PCA), both located in the glamorous Peace Palace in the World's judicial capital The Hague, as followed by the first maritime delimitation case launched only in 2010 in the International Tribunal for the Law of the Sea (ITLOS) in Hamburg, Germany.¹ As the UNSC Presidential Statement on Peaceful Settlement of Disputes S/PRST/2010/11 of 29 June 2010 in its first three paragraphs reiterated:

The Security Council reaffirms its commitment to the Charter of the United Nations and international law, and to an international order based on the rule of law and international law, which is essential for peaceful coexistence and cooperation among States in addressing common challenges, thus contributing to the maintenance of international peace and security.

The Security Council is committed to and actively supports the peaceful settlement of disputes and reiterates its call upon Member States to settle their disputes by peaceful means as set forth in Chapter VI of the Charter of the United Nations. The Council emphasizes *the key role of the International Court of Justice, the principal judicial organ of the United Nations*, in adjudicating disputes among States and the value of its work, and calls upon States that have not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute.

The Security Council calls upon States to resort also to other dispute settlement mechanisms, including international and regional courts and tribunals

¹B.Kwiatkowska, *Decisions of the World Court Relevant to the UN Convention on the Law of the Sea* (2nd Revised Edition 2010) at <http://www.brill.nl/decisions-world-court-relevant-un-convention-law-sea> & <http://www.uu.nl/nilos/books>; ICJ-PCIJ at www.icj-cij.org; PCA at <http://www.pca-cpa.org>; and UNDOALOS at <http://www.un.org/Depts/los>.

which offer States the possibility of settling their disputes peacefully, contributing thus to the prevention or settlement of conflict (emphasis added).²

In addition, an invaluable stimulation for peaceful settlement of law of the sea related disputes is also being provided by the UN Commission on the Limits of the

²UNSC Presidential Statement on Peaceful Settlement of Disputes S/PRST/2010/11 of 29 June 2010 (21 pages) at <http://www.un.org/News/Press/docs//2010/sc9965.doc.htm> via <http://www.un.org/en/unpress/index.asp> & <http://www.un.org/Docs/sc/>. See also Statement of ICJ President Hisashi Owada to the 65th UNGA, *ICJ Press Release* No.2010/35 of 28 October 2010 at <http://www.un.org/apps/news/story.asp?NewsID=36594&Cr=International+Court&Cr1,> <http://www.un.org/News/Press/docs/2010/ga11016.doc.htm>; Statements of ICJ President Owada to the UN Security Council of 29 October 2009 at <http://www.icj-cij.org/presscom/files/7/15597.pdf> and of 27 October 2010 at <http://www.icj-cij.org/presscom/files/1/16231.pdf> & <http://www.icj-cij.org>; PCA Awarded 2011 Global Arbitration Review Award of 4 March 2011 at <http://www.globalarbitrationreview.com/news/article/29299/and-winner-is-gars-pick-best/> and 13 April 2011 at <http://www.pca-cpa.org> & <http://www.globalarbitrationreview.com/news/article/29394/keeping-peace-permanent-court-arbitration/>; Former ICJ President Stephen M. Schwebel, *The Development of International Adjudication 1951-2011: A 60 Year Perspective* (Cambridge 17 March 2011) at <http://www.law.cam.ac.uk/press/events/2011/03/judge-stephen-schwebel-on-quotthe-development-of-international-adjudication-1951-2011-a-60-year-perspectivequot/1489> & <http://www.lcil.cam.ac.uk/news/article.php?section=26&article=1489>; OAS Round Table on the PCA Role Within the Pacific Settlement of Disputes of 6 April 2011 at http://www.oas.org/en/media_center/press_release.asp?sCodigo=AVI-067/11.

Continental Shelf (UN CLCS).³ The CLCS is an international treaty body formed pursuant to Article 2(1) of UNCLOS Annex II and composed of 21 experts in the fields of geology, geophysics or hydrography, whose primary function is “to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make Recommendations in accordance with Article 76” (Article 3(1)(a) of the UNCLOS Annex II). It is then for the

³CLCS Scientific and Technical Guidelines, UN Docs CLCS/11 & 11/Add.1 of 13 May & 3 September 1999 and 11/Corr.1 of 24 February 2000; The Date of Commencement of the 10-Year Period, SPLOS/72 of 29 May 2001; Rules of Procedure, CLCS/40 of 2 July 2004; Legal Opinion of UN Under-Secretary-General for Legal Affairs Nicolas Michel [<http://untreaty.un.org/ola>], CLCS/46 of 7 September 2005; *Training Manual for Delineation of the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles and for Preparation of Submissions to the Commission on the Limits of the Continental Shelf* (UNDOALOS 2006); Rules of Procedure, CLCS/40/Rev.1 of 17 April 2008 and some 59 actual and 40 prospective Submissions (and related Notes Verbales by other states) made pursuant to UNCLOS Article 76 at www.un.org/Depts/los/clcs_new/clcs_home.htm, as marked in “Table of Claims to Maritime Jurisdiction as of 31 July 2010”, *UN Law of the Sea Bulletin* 53-71 (2010 No.73) at www.un.org/Depts/los/. On important implications of *Difference Relating to Immunity From Legal Process of a Special Rapporteur of the Commission of Human Rights* Advisory Opinion [ICJ Reports 1999, 62; UN Doc. E/1999/49; 38 ILM 873 (1999)] for privileges and immunities of the CLCS, see B. Kwiatkowska, “The Law of the Sea Related Cases in the ICJ During the Presidency of Judge Stephen M. Schwab (1997-2000) and Beyond” (2002) 2 *The Global Community Yearbook of International Law and Jurisprudence* (YILJ), Tome I, 27, at 72-73, updated and revised as of 2010 at <http://www.uu.nl/nilos/onlinepapers/> and UN Doc. CLCS/46 (2005), *supra*, Part II.(a) at 7. On critical importance of the CLCS work, see L.D.M. Nelson, “The Continental Shelf: Interplay of Law and Science”, in: *Liber Amicorum Judge Shigeru Oda* (2002) 1235-1253; A.G. Oude Elferink, “The Continental Shelf of Antarctica: Implications of the Requirement to Make a Submission to the CLCS under Article 76 of the Law of the Sea Convention” (2002) 17 *International Journal of Marine and Coastal Law* (IJMCL) 485-520; T.H. Heidar, “Legal Aspects of Continental Shelf Limits”, in: M. Nordquist, J.N. Moore and Th.H. Heidar (eds.) *Legal and Scientific Aspects of Continental Shelf Limits* (2004) 19-39; A.G. Oude Elferink, “Submissions of Coastal States to the CLCS in Cases of Unresolved Land or Maritime Disputes”, *id.*, at 263-277; M.W. Lodge, “The International Seabed Authority - Its Future Directions and UNCLOS Article 82,” *id.*, at 403-409; R. Macnab, “UNCLOS Article 76: The Case for Transparency” (2004) 35 *Ocean Development & International Law Journal* (ODIL) 1-17; A. Chircop, “Operationalizing Article 82 of the UNCLOS: A New Role for the International Seabed Authority” (2004) 18 *Ocean Yearbook* 395-412; D.R. Rothwell, “Issues and Strategies for Outer Continental Shelf Claims” (2008) 23 *IJMCL* 185-211; L.D.M. Nelson, “The Settlement of Disputes Arising From Conflicting Outer Continental Shelf Claims” (2009) 24 *IJMCL* 409-422; A. Oude Elferink, “Impact of Other States on the Establishment of Outer CS Limits” (2009) 24 *IJMCL* 535-556 at <http://www.brill.nl/estu> and A. Oude Elferink, “The Continental Shelf in the Polar Regions” (2009) XL *Netherlands Yearbook of International Law* 121-181; John E. Noyes, “Judicial and Arbitral Proceedings and the Outer Limits of the Continental Shelf” (2009 No.4) 42 *Vanderbilt Journal of Transnational Law* 1211-1264 at <http://law.vanderbilt.edu/publications/journal-of-transnational-law/archives/volume-42-number-4/index.aspx>; Tina Schoolmeester & Elaine Baker (eds.), *Continental Shelf: The Last Maritime Zone* (UNEP-GRID-Arendal 2009) at http://www.unep.org/dewa/pdf/AoA/Continental_Shelf.pdf; Chapter 3 by V. Golitsyn, at 59, 69-73, and Part V, Chapters 23-20, at 423-590, in D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalization* (2010) at <http://www.brill.nl/default.aspx?partid=210&pid=33852>; R. Meese, “Bilan d'étape au 12 mai 2009 des demandes d'extension du plateau continental a la CLPC”, in: *Les implications juridiques de la ratification de la Convention des Nations Unies sur le droit de la mer* (Universite Mohammed V-Souissi 2010) 247-281. Judge Nelson was the Chairman and Alex Oude Elferink was the Rapporteur of *Report on the Legal Issues of the Outer Continental Shelf*, in: *71st ILA Conference - Berlin, 16-21 August 2004*, 773-825 (London 2004) and *Report on the Legal Issues of the Outer Continental Shelf*, in *72nd ILA Conference - Toronto, 4-8 June 2006* 215-253 (London 2006), as completed at *74th ILA Conference - The Hague, 15-20 August 2010* at <http://www.ila2010.org/>; Coalter G. Lathrop (Rapporteur of the ILA Baselines Committee), “Continental Shelf Delimitation Beyond 200 Nautical Miles: Approaches Taken by Coastal States Before the CLCS,” in: David A. Colson & Robert W. Smith (eds.), *International Maritime Boundaries* (Colson/ASIL IMB), Vol. VI (2011), 4139-4160 at <http://www.brill.nl/international-maritime-boundaries-2>.

coastal states to establish their outer CS limits on the basis of those CLCS Recommendations (UNCLOS Article 76(8)). Because of its fundamental duty not to prejudice any disputes, or more broadly - any matters, concerning maritime boundaries and other related issues, the CLCS' consideration of the actual and its hosting of preliminary Submissions of coastal states [and pertaining Notes Verbales of other states concerned] on limits of their outer continental shelves beyond 200 miles (outer CS) has been importantly stimulating future resolutions by means of bilateral (sometimes trilateral) negotiations of treaties and/or submitting of disputes concerned to the ICJ and other third party fora. The preliminary information on the outer CS limits (Preliminary Submissions) were allowed as means of overcoming the technical and financial constraints of developing states in meeting the CLCS deadline, but they can also occasionally be used as means of testing - prior to actual Submissions - reactions of other states to controversial/disputed claims, such as was the case with, e.g., France's 2009 Preliminary Partial (Saint Pierre & Miquelon) or China's 2009 Preliminary Partial (East China Sea) or Mauritius' 2009 Preliminary Partial (Chagos Archipelago) Submissions.⁴ The inaugural upholding by the 2006 UNCLOS⁵ Annex VII

⁴According to the 18th SPLOS Decision, UN Doc. SPLOS/183 (20 June 2008), preliminary information indicative of the outer CS (referred to hereinafter for reasons of practical convenience as Preliminary Submission) may satisfy the deadline requirements under Article 4 of UNCLOS Annex II and SPLOS/72 (2001) at www.un.org/Depts/los/, but such Preliminary Submission shall not be considered by the CLCS at http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm and is without prejudice to actual Submission and its consideration by the CLCS pursuant to UNCLOS Article 76 at http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm. All references in this article to actual Submissions are to their Executive Summaries which are available at this CLCS website. See also remarks on France's 2009 Preliminary Partial (Saint Pierre & Miquelon), China's 2009 Preliminary Partial (East China Sea) and Mauritius' 2009 Preliminary Partial (Chagos Archipelago) Submissions *infra*.

Barbados/Trinidad and Tobago Award, under presidency of Former ICJ President Stephen M. Schwebel, of the Tribunal's jurisdiction over delimitation of the outer CS beyond 200

⁵United Nations Convention on the Law of the Sea (UNCLOS) of 10 December 1982 [in force: 16 November 1994], 1833 UNTS 397, *reprinted in* (1982) 21 ILM 1261. For the current status of the Convention and the Agreement for the Implementation of Its Part XI, see UNDOALOS website at <http://www.un.org/Depts/los/>. On the prospective U.S. choice of Annex VII Arbitration, see *Message from the U.S. President to the Senate with Commentary* of 7 October 1994, (1995) 34 ILM 1393, 1399 and *The Law of the Sea Convention and U.S. Policy* 8, 13-14 (4 Aug 2005) at www.ncseonline.org/NLE/CRSreports/05aug/IB95010.pdf; Roundtable Discussion: Should the United States Join the Convention? If Not, Why Not? If So, What Are the Prospects?, chaired by Former ICJ President Stephen M. Schwebel, with participation of U.S. Ambassador David A. Balton, John Noyes and Edwin Williamson at the ASIL Symposium in Remembrance of Louis Sohn: The Law of the Sea in the Twenty-First Century, George Washington University Law School, Washington D.C., 24 October 2006 at www.asil.org/pdfs/sohnprogram1.pdf, of which proceedings were published in: (2007 No.3) 39 *George Washington International Law Review*; as followed by President G.W. Bush's Statement on Advancing U.S. Interests in the World's Oceans of 15 May 2007 at www.whitehouse.gov/ & www.asil.org/ilib070521.cfm; (2007) 46 ILM 886; U.S. Senate Committee on Foreign Relations Hearings of 27 September 2007 at http://www.lugar.senate.gov/news/record.cfm?id=284357&&search_field=law%20of%20the%20sea and 4 October 2007 at http://www.lugar.senate.gov/news/record.cfm?id=284885&&search_field=law%20of%20the%20sea; 2009 U.S. Three Marine National Monuments, *infra* note 215 and U.S. National Security Presidential Directive on Arctic of 9 January 2009, Section III.C.4 at www.whitehouse.gov/, <http://washingtontimes.com/news/2009/jan/13/bush-policy-stakes-us-claim-in-arctic> & www.thestar.com/News/Canada/article/569679. On concerns of the United States that its ratification of the UNCLOS could harm the ability of boarding ships engaged in the transportation of terrorists or weapons of mass destruction (WMD), see Press Release of the U.S. National Center for Public Policy Research of 10 August 2006 at www.nationalcenter.org/PRNPA542LawoftheSeaTreaty0806.html and the Report at www.nationalcenter.org/NPA542LawoftheSeaTreaty.html; Proliferation Security Initiative at <http://usinfo.state.gov/products/pubs/proliferation/>, www.proliferationsecurity.info & http://en.wikipedia.org/wiki/Proliferation_Security_Initiative. Generally, see B.H. Oxman, "The Territorial Temptation: A Siren Song at Sea" (2006) 100 *AJIL* 830-851; U.S. Legal Adviser John B. Bellinger (2005-2009), "The United States and the UNCLOS" of 3 November 2008 at www.state.gov/s/rls/111587.htm and His "Harvard Interview" of October 2010 at http://www.harvardilj.org/wp-content/uploads/2010/10/HILJ-Online_52_Profile_Bellinger.pdf & www.asil.org/; 65th UNGA Adopts Two Oceans Resolutions, UN Doc.GA/11031 of 7 December 2010, listing 123:1:2 vote at 1 and 20 at www.un.org/News/Press/docs/2010/ga11031.doc.htm; Speeches of UNSG Ban Ki-Moon and this *Journal's* Editor-in-Chief Prof. David Freestone on the Occasion of World Oceans Day of 8 June 2011 at <http://www.un.org/apps/news/story.asp?NewsID=38652&Cr=oceans&Cr1>, <http://www.un.org/News/Press/docs/2011/sgsm13619.doc.htm>, <http://www.unmultimedia.org/tv/webcast/2011/06/daily-press-briefing-and-guest-professor-david-freestone-on-the-occasion-of-world-oceans-day.html>, <http://www.uncsd2012.org/rio20/>, <http://untreaty.un.org/cod/avl/faculty/Freestone.html> & <http://www.un.org/en/events/oceansday/index.shtml>; 66th UNGA Adopts Two Oceans Resolutions, UN Doc.GA/11185 of 6 December 2011 at <http://www.un.org/News/Press/docs/2011/ga11185.doc.htm>; *infra* note 22.

miles,⁶ was accompanied by broad scholarly interest displayed in the CLCS work by both individual authors and the ILA Committee on the Legal Issues of the Outer Continental Shelf under Chair of 2007 Annex VII *Guyana/Suriname* President L.D.M. Nelson (Rapporteur Alex Oude Elferink of NILOS).⁷ Nevertheless, the question whether such jurisdiction is admissible prior to rendering of the CLCS Recommendations has not been raised either by other authors or by the ILA Committee and this question was incorrectly answered by Faroese Legal Adviser in his 2010 analysis in the negative.⁸ It is analyzed further below in

⁶UNCLOS Annex VII *Barbados/Trinidad & Tobago Maritime Delimitation (Jurisdiction and Merits)* Award of 11 April 2006 at PCA, www.pca-cpa.org/; (2006) 45 ILM 800; *PCA Awards Series*, Vol.V (2007), reprinted by Cambridge (2010) at www.asserpress.nl & www.cambridge.org/us/catalogue/catalogue.asp?isbn=9067043214; XXVII UNRIAA 147, http://untreaty.un.org/cod/riaa/cases/vol_XXVII/147-251.pdf & www.un.org/law/riaa and President Stephen M. Schwebel at http://en.wikipedia.org/wiki/Category:Presidents_of_the_International_Court_of_Justice, http://wn.com/Stephen_Schwebel, <http://www.carnegiecouncil.org/resources/video/data/000047> http://www.squire.law.cam.ac.uk/eminent_scholars/judge_stephen_m_schwebel_photographs_of_judge_stephen_m_schwebel.php, <http://www.brill.nl/decisions-world-court-relevant-un-convention-law-sea> & http://www.cambridge.org/gb/knowledge/isbn/item6037335/?site_locale=en_GB; and *supra* note 2. For the Award's *dispositif* with maps, see *UN Law of the Sea Bulletin* 99-106 (2006 No.61). For Statements upon the Award's delivery, see, e.g., 11 April 2006, www.barbados.gov.bb/Docs/FISHERIES_DISPUTE.pdf; 17 April 2006, www.thetobagonews.com/index.pl/article?id=6536488; 10 August 2007, www.tobagonews.com/index.pl/article?id=12978214. For summary of the 2006 Award's decisions, see ASIL/ILIB at www.asil.org/ilib060428.cfm; *UN Secretary-General Oceans Report*, Doc. A/61/63/Add.1, paras 175-176 (2006), www.un.org/Depts/los; and UNCLOS Annex VII *Guyana/Suriname - Suriname's Rejoinder*, paras 3.8/3.23, with the *Barbados/Trinidad and Tobago* Award also relied upon in Rejoinder, paras 2.74/2.75, 3.39, 3.52, 3.131, 3.148, 3.166, 3.181/3.182, 3.277, www.pca-cpa.org. For the 2006 Award's analysis, see B. Kwiatkowska, "The 2006 Barbados/Trinidad and Tobago Case Report" (2007) 101 AJIL 149-157 and her "Tribute in Remembrance of Louis B. Sohn at the ASIL Symposium on 24 October 2006" (2007 No.3) 39 *George Washington International Law Review* (GWILR) 573-620, reprinted at www.allbusiness.com/government/government-bodies-offices-law-courts/8896208-1.html & http://heinonline.org/HOL/Page?handle=hein.journals/gwlr39&div=26&g_sent=1&collection=journals; B. Kwiatkowska, "The 2006 *Barbados/Trinidad and Tobago* Award: A Landmark in Compulsory Jurisdiction and Equitable Maritime Boundary Delimitation" (2007) 22 IJMCL 7-60 at <http://www.brill.nl/estu>, updated as of 15 March 2010 at NILOS, www.uu.nl/nilos/onlinepapers; R. Churchill, "Dispute Settlement Under the UNCLOS: Survey for 2006" (2007) 22 IJMCL 463, at 470-483 at www.brill.nl/product.asp?ID=18253; Barbados Co-Agent R. Volterra, "The 2006 Award and International Law" at www.energy.gov.bb. The 2006 *Barbados/Trinidad & Tobago* Award's multiple contributions to international law and jurisprudence can be traced in Kwiatkowska, *Decisions of the World Court* (2010), *supra* note 1.

⁷UNCLOS Annex VII *Guyana/Suriname Maritime Delimitation (Jurisdiction and Merits)* Award of 17 September 2007 at PCA, www.pca-cpa.org/, ASIL/ILIB, www.asil.org/ilib071214.cfm & <http://cgxenergy.ca/news.html>; UN Court Favours Guyana, 20 September 2007, www.iht.com/articles/ap/2007/09/20/business/CB-FIN-Suriname-Guyana-Border-Dispute.php & http://cgxenergy.ca/News_Sep20_2007.html; 21 September 2007, http://cgxenergy.ca/News_Sep21_20071.html & http://cgxenergy.ca/News_Sep21_20072.html; 22 September 2007, http://cgxenergy.ca/News_Sep22_20071.html; 23 September 2007, www.trinidadexpress.com/index.pl/article_news?id=161206967; Suriname Parliament Rejects Motion to Challenge Maritime Boundary Award and Former ICJ President Stephen M. Schwebel Speaks in Support of the *Guyana/Suriname* Award's Maritime Delimitation Resolution, 15 October 2007 at www.rigzone.com/news/article.asp?a_id=51473 & http://cgxenergy.ca/News_Oct12_2007.html; S. Fietta, "The 2007 *Guyana/Suriname* Case Report" (2008) 102 AJIL 119-128. For Reports of *Guyana/Suriname* President Nelson's ILA Committee on the Legal Issues of the Outer Continental Shelf, see *supra* note 3.

⁸B. Kunoy, "The Admissibility of a Plea to an International Adjudicative Forum to Delimit the Outer Continental Shelf Prior to the Adoption of Final Recommendations by the CLCS" (2010) 25 IJMCL 237-270 at <http://www.brill.nl/estu>. On the 2006 Southern Banana Hole Interim Agreement which most likely provided an incentive for Faroese Legal Adviser Mr. Kunoy's views, see *infra* notes 30-34.

the context of other issues of peaceful settlement of disputes which are involved in the CLCS work related to developing states whose practice has so far received less attention in the UNCLOS literature than that of developed states.

Fundamental Principles of Not Prejudicing of Disputed and Undisputed Maritime Boundary Delimitations or Other Unresolved Land or Maritime Disputes under the UNCLOS and the CLCS Rules

The fundamental duty of coastal states and the CLCS with respect to the determination of the limits of an inner and outer continental shelf within and beyond 200 miles respectively without affecting boundary delimitation of these areas is expressly laid down in Article 76(10) of the UNCLOS Continental Shelf Part VI. Article 76(10) also applies to the exclusive economic zone (EEZ) by virtue of Article 56(3) of the EEZ Part V (providing for exercising of the rights related to the seabed and subsoil of 200-mile EEZ in accordance with the CS Part VI) and it is reinforced in Article 134(4) of Deep Seabed Part XI as follows:

Article 76(10) of the UNCLOS Part VI: The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

Article 134(4) of the UNCLOS Part XI: Nothing in this article affects the establishment of the outer limits of the continental shelf in accordance with Part VI or the validity of agreements relating to delimitation between States with opposite or adjacent coasts.⁹

While not expressly formulated in the UNCLOS, similar principle has also evolved in customary international law with respect to Article 121 on Regime of Islands of the UNCLOS Part VIII and it could be regarded as supplementing Article 121(1)-(3) by providing that:

customary law Article 121(4) of the UNCLOS Part VIII: The provisions of this article are without prejudice to the questions relating to unresolved disputes concerning sovereignty over insular territory and to the delimitation of maritime

⁹Article 76(10) is noted *in passim* (without analysis of its content), in *Tunisia/Libya (Merits)* Judgment, ICJ Reports 1982, 48, para.47 and Dissenting Opinion of Judge Evensen, at 285, para.7 and 290, para.11, while the *Libya/Malta (Merits)* Judgment, having quoted Article 76(10), ICJ Reports 1985, 30, para.27, remarks: "That the questions of entitlement and of definition of continental shelf, on the one hand, and of delimitation of continental shelf on the other, are not only distinct but are also complementary is self-evident. The legal basis of that which is to be delimited, and of entitlement to it, cannot be other than pertinent to that delimitation"; also quoted by Separate Opinion of Vice-President Sette-Camara, at 68; Pleadings, Vol.I, 100 n.4 [Libya's Memorial], Vol.II, 103 n.1 [Libya's Counter-Memorial], Vol.III, 97 [Libya's Reply], Vol.IV, 86 [Counsel Queneudec, 11 Dec 1984], 437 [Counsel Jaenicke, 21 Feb 1985] at www.icj-cij.org; *Barbados/Trinidad & Tobago* Award Hearings Day-4, 97-100 [Counsel Crawford, 21 Oct 2005] and 2006 Award, para.87, quoting Trinidad and Tobago's argument that the CLCS "has no competence in the matter of delimitation between adjacent coastal States; that competence is vested in a tribunal duly constituted under Part XV of the Convention" at www.pca-cpa.org.

zones of islands between States with opposite or adjacent coasts pursuant to Articles 15, 74 and 83.

Although Article 121(4) reflects new customary - and not treaty - law, it seems noteworthy that Article 121(3) rocks-principle clearly originated from the attempts undertaken during UNCLOS III *travaux* - in departure from the traditional customary rule (codified in the 1958 UN Geneva Conventions) of equal entitlement of continental and insular territory to maritime zones and areas - by Romania, Turkey, Ireland and African states to generalize their interests concerning specific islands into the new rule governing a reduced role of such islands ("rocks") in maritime delimitation; this new rule was forcefully opposed by Britain, Canada, France, Japan, Iran, Venezuela and many other states which suggested to delete rocks-principle of Article 121(3) from the Convention on the ground that such generalization would be hazardous, if not impossible.¹⁰ In fact, with a single exception of Okinotorishima (Offshore Bird) Islets,¹¹ the issue of eventual application of Article 121(3) does not arise in practice unless in the context of specific disputes over maritime delimitations, often intertwined with disputes over sovereignty, such as those involving Serpents Island, Aegean Sea Islands (partly disputed by Greece/Turkey), Rockall, in the case of which protests of potentially affected neighbouring states were instrumental for Britain's ultimate roll-back from its claim, Kolbeinsey, Abu Musa and Tunbs Islands (disputed by Iran/UAE), Los Monjes, Aves Island (disputed by Venezuela/Antigua-Dominica), Senkaku/Diaoyu Islands (disputed by China/Japan/Taiwan), Minerva Reef (disputed by

¹⁰For *travaux préparatoires* of Article 121 during the Third UN Conference on the Law of the Sea (UNCLOS III), see J.R. Stevenson and B.H. Oxman, "The Third United Nations Conference on the Law of the Sea: The 1974 Caracas Session" (1975) 69 AJIL 1-30, at 24-25 and "The 1975 Geneva Session", *id.*, at 763, 786; *The Law of the Sea - Regime of Islands: Legislative History of Part VIII (Article 121) of the United Nations Convention on the Law of the Sea*, UN Sales No.E.87.V.II (1988); S.N. Nandan CBE and Shabtai Rosenne (eds.), *United Nations Convention on the Law of the Sea 1982 - A Commentary*, Vol.III (Virginia Center for Oceans Law & Policy 1995) 321-339. See also W. van Overbeek, "Article 121(3) LOSC in Mexican State Practice in the Pacific" (1989) 4 *International Journal of Marine & Coastal Law* (IJMCL) 252-267; J.M. van Dyke, J. Morgan and J. Gurish, "The Exclusive Economic Zone of the Northwestern Hawaiian Islands: When Do Uninhabited Islands Generate an EEZ?" (1988) 25 *San Diego Law Review* 425-494; B. Kwiatkowska and A.H.A. Soons, "Entitlement to Maritime Areas of Rocks Which Cannot Sustain Human Habitation or Economic Life of Their Own" (1990) 21 *Netherlands Yearbook of International Law* 139-181; S. Karagiannis, "Les Rochers qui ne se prêtent pas à l'habitation humaine ou à une vie économique propre et le droit de la mer" (1996) 29 *Revue Belge de Droit International* 559-624; J.I. Charney, "Rocks That Cannot Sustain Human Habitation" (1999) 93 AJIL 863-878, as preceded by his thoughts drawn on Article 121(3) rocks shortly upon entry of the UNCLOS into force in 1994, in: J.I. Charney, "Central East Asian Maritime Boundaries and the Law of the Sea" (1995) 89 AJIL 724, at 732-735; A. Oude Elferink, "Is It Either Necessary or Possible to Clarify the Provision on Rocks of Article 121(3) of the Law of the Sea Convention?" (April 1999 No.92) *The Hydrographic Journal* 9-16; R.R. Churchill and A.V. Lowe, *The Law of the Sea* (3rd Ed. 1999) 49-50, 150-151, 163-164; C.R. Symmons, *Ireland and the Law of the Sea* (2nd Ed. 2000) 73-78, 144-153; J.L. Jesus, "Rocks, New-Born Islands, Sea Level Rise and Maritime Space", in J.A. Frowein (ed.), *Liber Amicorum Ambassador Tono Eitel* (2003) 579-603, 584; J.M. van Dyke, "The Republic of Korea's Maritime Boundaries" (2003) 18 IJMCL 509-540 at <http://www.brill.nl/estu>; J.M. van Dyke, "Legal Issues Related to Sovereignty over Dokdo/Takeshima and Its Maritime Boundary" (2007) 38 ODIL 157-224; P.Siousiouras & I. Tsouros, "Island Regime in the Context of the Montego Bay Convention on the Law of the Sea" (2009) 60 *Revue Hellenique de Droit International* 2007 359-370; B. Kwiatkowska and A.H.A. Soons, "Some Reflections on Ever Puzzling Rocks Principle under UNCLOS Article 121(3)" (2011, in press) 11 *The Global Community Yearbook of International Law and Jurisprudence* 1-40 at <http://www.us.oup.com/> & <http://ilreports.blogspot.com/2010/10/new-volume-global-community-yearbook-of.html>.

¹¹See section on Special Case of Okinotorishima - Japan, China, Republic of Korea in this article *infra*.

Fiji/Tonga), Hunter and Matthew Islands (disputed by France/Vanuatu), Jan Mayen, of which island status was expressly endorsed by the 1981 *Iceland/Norway Jan Mayen* Conciliation Report, as reaffirmed by the 1993 *Denmark v. Norway (Jan Mayen)* Judgment, subject to application of Articles 74/83, or Pedra Branca/Pulau Batu Puteh which was awarded by the 2008 *Malaysia/Singapore* Judgment to Singapore and is now involved in its pending maritime delimitation with Malaysia.¹² This intimate relationship between the regime of islands and equitable maritime boundary delimitation, which is reflected by customary law based Article 121(4) proposed above, was also appreciated by supporters of the rocks-principle themselves, which repeatedly suggested during UNCLOS III to establish the necessary link between Article 121 and Articles 15 and 74/83, and this intimate relationship

¹²On the the *Denmark (Greenland) v. Norway (Jan Mayen) Maritime Delimitation* Judgment, 14:1, in favour: President Sir Robert Jennings, Vice-President Oda and Judges Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva and Ajibola; against: Judge *ad hoc* Fisher (designated by Denmark), ICJ Reports 1993, 38; Charney/ASIL IMB Vol.III (1998) Report No.9-19, at 2507-2525, see E. Decaux, “L’Affaire *Danemark c. Norvege* de la délimitation maritime dans la région située entre le Groenland et Jan Mayen - Arrêt de la C.I.J. du 14 juin 1993” (1993) 39 AFDI 495-513; J.I. Charney (1994) 88 AJIL 105-109; R. Churchill, “The *Greenland/Jan Mayen* Case and Its Significance for the International Law of Maritime Boundary Delimitation”(1994) 9 IJMCL 1-29 at <http://www.brill.nl/estu>; B. Kwiatkowska, “Equitable Maritime Boundary Delimitation, as Exemplified in the Work of the International Court of Justice During the Presidency of Sir Robert Y. Jennings (1991-1994) and Beyond” (1997) 28 *Ocean Development and International Law* (ODIL) 91, at 101-107, 124-126. For controversies between Singapore arguing that Pedra Branca is an island under UNCLOS Article 121(1)-(2) and Malaysia arguing that it is an Article 121(3) rock, see Singapore EEZ Claim Unlawful under UNCLOS 121(3) of 23 July 2008 at www.bernama.com/bernama/v3/news_lite.php?id=348007, www.bernama.com/bernama/v3/news_lite.php?id=348052 & www.nst.com.my/Current_News/NST/Wednesday/Frontpage/2300818/Article/index_html; Singapore EEZ Claim Is An Act of Provocation of 24 July 2008 at www.nst.com.my/Thursday/Frontpage/2301672/Article/index_html & <http://malaysianinsider.com/index.php/headlines/42/2076>; Malaysia/Singapore Will Wait for Technical Committee’s Report of 24 July 2008 with Map at www.nst.com.my/Thursday/Frontpage/2301681/Article/index_html & www.straitstimes.com/Latest+News/S-E+Asia/STIStory_260859.html; Malaysia Reminds Singapore to Cease Provocative Claims for EEZ Around Pulau Batu Puteh/Pedra Branca of 18 August 2008 at www.bernama.com/bernama/v5/newsindex.php?id=353520; Joint Malaysia/Singapore Statement of 1 September 2008 stressing that they will abide by the ICJ *Malaysia/Singapore Sovereignty over Pedra Branca/Pulau Batu Puteh* Judgment, ICJ Reports 2008, 12 & www.bernama.com/bernama/v3/news_lite.php?id=356565; R. Beckman and C. Schofield, “Moving Beyond Disputes over Island Sovereignty in the Singapore Strait” (2009 No.1) 40 ODIL 1-35, esp.19-26.

has been expressly articulated in the uniquely unanimous 2009 *Romania v. Ukraine* Judgment.¹³

In view of significance of maritime boundary delimitations for "permanent" determination of the "final and binding" outer limits of the continental shelf in pursuance of Article 76(8)-(9), the principle of Article 76(10) that: "The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts", as mirrored by Article 134(4) and customary law based Article 121(4) quoted above, is further reinforced by Article 9 of the UNCLOS Annex II and Rule 46 of the CLCS Rules of Procedure and its Annex I. In particular:

Article 9 of the UNCLOS Annex II: The actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts.

While these two processes - boundary delimitation and outer CS limit delineation - are separate, the issues involved are closely linked. And, although efforts have been made to insulate Article 76 delineation process from related delimitation disputes, most Submissions lodged with the CLCS implicate one or more boundary relationships.

In case of already existing binding treaties on delimitation of the continental shelf both within and beyond 200 miles, UNCLOS Article 83(4), which mirrors Article 74(4) on

¹³*Romania v. Ukraine Maritime Delimitation in the Black Sea* Judgment, ICJ Reports 2009, 122, para.185, stating that: "As the jurisprudence has indicated, the Court may on occasion decide not to take account of very small islands or *decide not to give them their full potential entitlement to maritime zones*, should such an approach have a disproportionate effect on the delimitation line under consideration"; as discussed by C.G. Lathrop, "The *Romania v. Ukraine* Case Report"(2009) 103 AJIL 543-549; B. Kwiatkowska, "The Law of the Sea Related Cases in the International Court of Justice During the Presidency of Judge Stephen M. Schwebel (1997-2000) and Beyond" (2002 Vol.I) 2 *The Global Community Yearbook of International Law and Jurisprudence* 27, at 32-34 at <http://www.us.oup.com/product/9780379214758.do> & www.oceanalaw.com/main_product_details.asp?ID=298, updated and revised as of 10 March 2010, Section 6: Equitable Maritime Delimitation and Territorial Questions, pp.85-86 at NILOS Online Papers www.uu.nl/nilos/onlinepapers; Ms Nilufer Oral (Istanbul), "The *Romania v. Ukraine* Case Report"(2010) 25 IJMCL 115-141 at <http://www.brill.nl/estu>. For reaffirmation of the principle of "ignoring the presence of islets, rocks and minor coastal projections", see *North Sea Continental Shelf* Judgment, ICJ Reports 1969, 20, para.13, and at 36, para.57; as reaffirmed by the 1977 *Anglo/French* Award, paras 237-251 [with para.244 reaffirmed by the 2001 *Qatar v. Bahrain* Judgment, para.247]; *Canada/USA Gulf of Maine Area* Judgment, ICJ Reports 1984, 329-330, 332, paras 201-203, 210; *Libya/Malta Continental Shelf (Merits)* Judgment, ICJ Reports 1985, 48, para.64 (Filfla); Turkey's perception of the Greek islands as "mere protuberance", in the *Greece v. Turkey Aegean Sea (Jurisdiction)* Judgment, ICJ Reports 1978, 35, 37; Pleadings, 93-94 [Counsel O'Connell, 26 August 1976]; 1999 *Eritrea/Yemen (Phase II)* Award, paras 119, 138, 147-148 (Jabal al-Tayr Island and Group of Jabal al-Zubayr); *Qatar v. Bahrain (Merits)* Judgment, ICJ Reports 2001, 95, para.179 [reaffirming the 1984 *Gulf of Maine* Judgment, para.210, *supra*], at 99-100, paras 197-198, at 104-109, paras 219-222 (Qit-at Jaradah), at 114-115, paras 246-249 (Fasht al Jarim), with both paras 219 & 246 reaffirming the 1969 *North Sea*, para.57 and the 1985 *Libya/Malta*, para.64, Judgments, *supra*; 2002 *Newfoundland and Labrador/Nova Scotia (Phase II)* Award, paras 4.31, 4.35 (Sable Island); *Nicaragua v. Honduras* Judgment, ICJ Reports 2007, paras 302 *et seq*; Hearings, CR 2007/1, 20, para.18: Fifla [Agent Arguello, 5 March 2007], 60-64 [Counsel Oude Elferink], CR 2007/2, 18, para.39, at 36, paras 112-113 [Counsel Brownlie, 6 March], CR 2007/8, 37, para.7 [Counsel Dupuy, 14 March 2007]; *Romania v. Ukraine* Judgment, ICJ Reports 2009, 109-110, 120-122, paras 149, 182, 185-186 (Serpents Island) at www.icj-cij.org. For similar ignoring of small river rocks and movable sandbanks, see *Benin/Niger* Judgment, paras 19, 78-79, ICJ Rep. 2005, 104, 127-128; Niger's Memorial, 151; Hearings, C5/CR 2005/4, 25, paras 16-17 [Counsel Salmon, 8 March 2005] at www.icj-cij.org.

the 200-mile EEZ delimitation, and which by analogy also applies to the “final and binding” Judgments and Awards resolving territorial issues and land-maritime boundary delimitations, provides that:

Article 83(4) of the UNCLOS Part VI: Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.¹⁴

Even if such delimitation and/or sovereignty agreement has been subsequently terminated, this would not affect the respective outer CS boundary. This is due to a principle of international law elucidated in the 1994 *Libya/Chad Territorial Dispute*, the 2007 *Nicaragua v. Colombia (Preliminary Objections)* and the 2009 *Costa Rica v. Nicaragua San Juan River* Judgments that a territorial regime established by a treaty "achieves a permanence which the treaty itself does not necessarily enjoy" and the continued existence of that regime (resembling "the hallmarks of finality") is not dependent upon the continuing life of the treaty under which the regime is agreed.¹⁵

Whereas UNCLOS Article 76(10), 134(4) and Article 9 of UNCLOS Annex II quoted above all expressly aim at avoiding prejudice to maritime boundary delimitations of the outer CS beyond 200 miles, Rule 46 of the CLCS Rules of Procedure, including its Annex I, on its face expands prevention of such prejudice:

¹⁴By analogy: Where there are Judgment and/or Award binding the States concerned, territorial questions and land-maritime delimitations shall be determined in accordance with these Judgment and/or Award. For emphasis on the "final and binding" nature of judgments and awards, see, e.g., ICJ President Guillaume's Statement on the 2002 *Cameroon v. Nigeria; Equatorial Guinea (Merits)* Judgment at www.icj-cij.org and the 2006 *Barbados/Trinidad and Tobago* Award, *dispositif* para.385(2); UNEEBC President Lauterpacht's Reports of 2005-2008 concerning the 2002 *Eritrea/Ethiopia Delimitation of the Border (Merits)* Decision at www.pca-cpa.org; (2002) 41 ILM 1057; XXV UNRIAA 83 at http://untreaty.un.org/cod/riaa/vol_XXV.htm; UN Doc.S/2008/630 [President Lauterpacht's 27th Final Report (2008) at www.un.org/Docs/journal/asp/ws.asp?m=s/2008/630 & www.un.org/apps/news/story.asp?NewsID=28548&Cr=ethiopia&Cr1=eritrea; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Jurisdiction and Merits)* Judgment, President Rosalyn Higgins, ICJ Reports 2007, 76-102, paras 80-141 at www.icj-cij.org; 2009 Final *North-South Sudan Abyei Boundary* Award and President Pierre-Marie Dupuy's Statement of 22 July 2009 at www.pca-cpa.org and *infra* notes 18, 78. Generally, see Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1997* (2006) 1598-1605 [The *Res Judicata*] and 1605-1606 [The Judgment and Third Parties].

¹⁵*Nicaragua v. Colombia (Preliminary Objections)* Judgment, ICJ Reports 2007, 861, para.89, *reaffirming Territorial Dispute (Libyan Arab Jamahiriya/Chad)* Judgment, ICJ Reports 1994, 37, paras 72-73, *as reaffirmed* by the *Costa Rica v. Nicaragua San Juan River* Judgment, ICJ Reports 2009, 243, para.68 at www.icj-cij.org. See also Article 62(2) [codifying customary international law on *Rebus sic stantibus* and Boundary Treaties] of the 1969 UN Vienna Convention on the Law of Treaties [1155 UNTS 331] and the 1986 Vienna Convention on the Law of Treaties Between States and International Organizations [(1986) 25 ILM 543], as well as Articles 11-12 [codifying customary international law on Boundary and Territorial Regimes Treaties] of the 1978 UN Vienna Convention on Succession of States in Respect of Treaties [1946 UNTS 3, <http://untreaty.un.org/>]; and application of these principles, in the *Hungary/Slovakia Gabcikovo-Nagymaros Project* Judgment, ICJ Reports 1997, 58-62, paras 92-97, at 64-65, para.104, at 70-73, paras 119-124; as analyzed by M.N. Shaw, *International Law* (5th Edition 2003) 873-875. For *travaux preparatoires* of the UN Vienna Conventions, see invaluable work of Sir Arthur Watts KCMG QC, *The International Law Commission 1949-1998*, Vol.II: The Treaties, at 759-766 [Article 62(2) of the 1969 Vienna Convention], 914-919, 1047 [Article 62(2) of the 1986 Vienna Convention], 1042-1070 [Articles 11-12 of the 1978 Vienna Convention] (Oxford 1999).

* from boundary delimitations of the outer CS per se (“the question of delimitation of the continental shelf “ as referred to in UNCLOS Article 76(10) and “matters relating to delimitation of boundaries” as referred to in Article 9 of UNCLOS Annex II),

* to also disputes over such boundary delimitations (not all pending boundaries involve disputes over those boundaries) and

* to other cases of unresolved land or maritime disputes.¹⁶

In particular:

Rule 46 of the CLCS Rules of Procedure

Submissions in Case of a Dispute Between States with Opposite or Adjacent Coasts or in Other Cases of Unresolved Land or Maritime Disputes

1. In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States or in other cases of unresolved land or maritime disputes, submissions may be made and shall be considered in accordance with Annex I to these Rules.

2. The actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between States.¹⁷

This on its face expansion under the CLCS Rule 46 quoted above to land/maritime disputes seems, however, on a closer look to conform with the “ordinary meaning” interpretation of “the question of delimitation of the continental shelf between States with opposite or adjacent coasts” under UNCLOS Article 76(10) and with such interpretation of “matters relating to delimitation of boundaries” under Article 9 of UNCLOS Annex II which

¹⁶For this reason, my present article is entitled: “Submissions to the UN CLCS in Cases of Disputed and Undisputed Maritime Boundary Delimitations or Other Unresolved Land or Maritime Disputes.” See also section on Special Case of Okinotorishima - Japan, China, Republic of Korea in this article *infra*, analyzing whether dispute over UNCLOS Article 121(3) in the case of Okinotorishima, which uniquely does not involve any delimitation dispute, falls within “other unresolved land or maritime disputes”. For an approach of Bangladesh that such disputes cover those over delimitation and straight baselines (of Myanmar and India), see *infra* notes 236, 239, 247-248. On possible dispute over application of Final Act’s Annex II to states other than India and Sri Lanka, see section on Maldives, Sri Lanka, India, Myanmar, Kenya - Annex II of UNCLOS III Final Act in this article *infra*.

¹⁷CLCS Rules of Procedure, Docs CLCS/40 (2004) and CLCS/40/Rev.1 (2008), *supra* note 3 and sources quoted therein. On central significance of territorial issues and land and maritime boundaries in international law and jurisprudence, see *supra* note 15; Malcolm N. Shaw, *International Law* (Cambridge 6th Edition 2008) 495-498; Boundary treaties and boundary awards, 590-607; Maritime delimitation at http://www.cambridge.org/gb/knowledge/isbn/item2327693/?site_locale=en_GB.

should be construed as applying to both disputed and non-disputed delimitations.¹⁸ This seems to be especially so because as the ICJ authoritatively held, the claim relating to sovereignty is implicit (inherent) in and arises directly out of the question of delimitation of the disputed maritime areas,¹⁹ and because UNCLOS Article 76(10), as reinforced by UNCLOS Article 134(4) and Article 9 of UNCLOS Annex II quoted above, are all what the famous *Virginia Commentary* calls “savings provisions for *all questions* regarding the

¹⁸For reaffirmation of the rule of “the ordinary meaning” to be given to the terms of the treaty, see *Libya/Chad Territorial Dispute* Judgment, ICJ Reports 1994, 21-22; *Qatar v. Bahrain Maritime Delimitation and Territorial Questions (Jurisdiction and Admissibility)* Judgment, ICJ Reports 1995, 18, and Dissenting Opinion of Vice-President Schwebel, 27-32, 36, as relied upon in *Oil Platforms (Preliminary Objection)* Separate Opinion of Judge *ad hoc* Rigaux, ICJ Reports 1996, 864-865, who characterizes Judge Schwebel's Dissent as “enlightening analysis”; *Botswana/Namibia Kasikili/Sedudu Island* Judgment, ICJ Reports 1999, 1060, para.20 and 1075, para.48; 2000 *Southern Bluefin Tuna (Jurisdiction and Admissibility)* Award, para.57, in (2000) 39 ILM 1359; 119 ILR 508; *Germany v. United States LaGrand* Judgment, ICJ Reports 2001, 501-506, paras 98-109 and *dispositif* para.345(7); 2002 *Eritrea/Ethiopia Boundary* Decision, paras 3.4, 5.16, 5.27-5.36, 5.83 at www.pca-cpa.org; (2002) 41 ILM 1057; XXV UNRIAA 83; *Indonesia/Malaysia Pulau Ligitan and Pulau Sipadan (Merits)* Judgment, ICJ Reports 2002, 645-646, paras 37-38; *Oil Platforms (Merits)* Hearings, CR 2003/12, 24 [Counsel Weil, 26 February 2003] at www.icj-cij.org; 2002 ICSID *Mondev International Ltd. v. USA* Award, para.43 n.5, in (2003) 42 ILM 85, 94; 2005 *Belgium/Netherlands Iron Rhine* Award, paras 45-47, 85-86 at www.pca-cpa.org; XXVII UNRIAA 35 (2008) at www.un.org/law/riaa; *Costa Rica v. Nicaragua San Juan River* Judgment, ICJ Reports 2009, 237, 242-243, paras 47, 64-65 and Separate Opinion of Judge Skotnikov, 284-285, paras 6, 8 at www.icj-cij.org; 2009 *North-South Sudan Abyei* Award, paras 572, 583, 652-655 at www.pca-cpa.org; ASIL Insights on “The *Abyei* Boundary Award” by John R. Crook of 16 September 2009 at www.asil.org/insights090916.cfm and BIICL at www.biicl.org/events/view/-/id/462; C.G. Lathrop, “The *Abyei* Case Report” (2010) 104 AJIL 66-73; UNSG Ban Ki-Moon Welcomes the *Abyei* Award as Major Contribution to Peace of 22 July 2009 at www.un.org/apps/news/story.asp?NewsID=31544&Cr=Abyei&Cr1 & www.un.org/apps/sgsgstats.asp?nid=3990; An International Court Affirms Northern Boundary and Redefines the Eastern and Western Boundaries of Abyei (“Kashmir” of Sudan) of 22 July 2009 at www.nation.co.ke/News/africa/-/1066/627998/-/138pi99z/-/index.html, www.globalarbitrationreview.com/news/article/18363 & www.voanews.com/english/2009-07-22-voa40.cfm; Hague *Abyei* Border Ruling Raises Big Peace Hopes in Sudan of 22 July 2009 at <http://news.bbc.co.uk/2/hi/africa/8162690.stm>, www.haguejusticeportal.net/eCache/DEF/10/881.TGFuZz1FTg.html & www.sudantribune.com/spip.php?article31901, *id.* 31902, *id.* 31903 & www.sudantribune.com/spip.php?mot99; *Argentina v. Uruguay Pulp Mills (Merits)* Judgment, ICJ Reports 2010, paras 64-66 at www.icj-cij.org; *Georgia v. Russia Application of the CEDR (Preliminary Objections)* Judgment, paras 123-147, ICJ Reports 2011, Joint Dissent of President Owada, Judges Simma, Abraham and Donoghue and Judge *Ad Hoc* Gaja, paras 14-38, Dissent Cancado Trindade, paras 88-109 at www.icj-cij.org. See also S.M. Schwebel, “May Preparatory Work Be Used To Correct Rather Than Confirm the ‘Clear’ Meaning of a Treaty Provision?”, in: J. Makarczyk (ed.), *Theory of International Law at the Threshold of the 21st Century* (1996) 541-547, which essay is *reprinted in 2 Transnational Dispute Management (TDM)* (2005 No.5), jointly with Comments on Judge Schwebel's Essay by Maurice Mendelson at <http://www.transnational-dispute-management.com/>.

¹⁹*Nicaragua v. Honduras (Merits)* Judgment, ICJ Reports 2007, 697, paras 114-116, quoted *infra* notes 41-44.

delimitation of overlapping claims between States to continental shelf”.²⁰ As the *Virginia Commentary* clarified:

The phrase “matters relating to delimitation of boundaries” emphasizes that the CLCS is not to function in determining, or to influence negotiations on, the continental shelf boundary between States with overlapping claims (assuming the boundary in question is beyond 200 nautical miles). It also indicates that the Commission is not to be involved in any matters regarding the determination of the outer limits of a coastal State’s continental shelf where there is a dispute with another State over that limit. The Commission’s role is to make recommendations on the outer limits of a coastal State’s continental shelf, not to be involved in matters relating to delimitation of the continental shelf between States.²¹

Similar emphasis can be found in para.6 of the U.S. Fact Sheet on Extended Continental Shelf (ECS) which reflects the principle of UNCLOS Article 76(10) quoted above and which states that:

6. Can the actions of the CLCS impact areas where maritime boundaries have yet to be determined?

²⁰Satya N. Nandan and Shabtai Rosenne, *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol.II (Martinus Nijhoff 1993) pp.837-890: UNCLOS Article 76, at p.883: UNCLOS Article 76(10), also noting at pp.848-853, that the wording of Article 76(10) remained the same in the 1975 U.S. and Evensen Group’s proposals, the 1976 proposal of Ireland which drew on elements from the U.S. and Evensen’s texts, and in all other ensuing drafts until their inclusion into UNCLOS; pp.1000-1018: UNCLOS Annex II; p.1017: Article 9 of UNCLOS Annex II; pp.1023-1025: UNCLOS III Final Act’s Annex II; Satya N. Nandan, Michael W. Lodge and Shabtai Rosenne, *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol.VI (Martinus Nijhoff 2002) pp.85-86: UNCLOS Article 134(4).

²¹*Id.*, Vol.II, at 1017.

No. The CLCS has no mandate to settle boundary disputes, nor can it make any decisions that will bias future resolution to such disputes. Any boundary disagreements must be resolved between the States themselves.²²

Although Rule 46 of the CLCS Rules of Procedure quoted above seems to distinguish between disputes (Rule 46(1)) and boundary delimitations not involving disputes (Rule 46(2)), Annex I of the CLCS Rules seems to apply only to disputes by providing:

Annex I of the CLCS Rules of Procedure
Submissions in Case of a Dispute Between States with Opposite or Adjacent Coasts
or in Other Cases of Unresolved Land or Maritime Disputes

1. The Commission recognizes that the competence with respect to matters regarding disputes which may arise in connection with the establishment of the outer limits of the continental shelf rests with States.

However, this impression seems misleading, because not only - as para.1 of Annex I provides - all disputes, but also all pending boundary delimitations which do not involve disputes fall under the competence of states. The wording of UNCLOS Article 76(10) and all other “savings provisions” which were quoted in this article above (UNCLOS Article 134(4), Article 121(4) and Article 9 of UNCLOS Annex II, as well as Rule 46 and Annex I of the CLCS Rules of Procedure) leave no doubt that the CLCS - as a technical and not a judicial body - must not prejudice determination of both disputed and undisputed maritime boundaries and that this determination can be effected at any time through the consent-based procedures (of states’ own choice or compulsory) of dispute settlement pursuant to the

²²U.S. Fact Sheet on Extended Continental Shelf (ECS), para.6 of 9 March 2009 at www.state.gov/e/oes/rls/fs/2009/120185.htm and Defining the Limits of the U.S. Continental Shelf at www.state.gov/e/oes/continentalshelf/index.htm; U.S. Office of Ocean and Polar Affairs at <http://www.state.gov/e/oes/ocns/opa/index.htm>. On importance attached by the United States to the CLCS, see also 2009 CLCS Recommendations on Mexico’s 2007 Partial (Western Gulf of Mexico) Submission endorsing coordinates of the 2000 Mexico/USA Treaty and the U.S. Notes Verbales concerning Submissions of Russia, Brazil, Australia, Argentina, Cuba and Japan at CLCS website, *supra* note 3; Statements of Ambassador Bolton, UN Doc. A/60/PV.54, 3-4 (28 November 2005) and Mrs Constance Arvis, 16th SPLOS, 19-23 June 2006 (20 June) at www.un.org/News/Press/docs/2006/sea1861.doc.htm; U.S. Senate Hearings of 27 September 2007 and the 2009 U.S. Presidential Arctic Directive, Section III.D, as well as other references *supra* note 5; the 2009 U.S. Three Marine National Monuments, *infra* notes 214-216; U.S. EEZ and Extended Continental Shelf of 7 June 2011 at <http://www.heritage.org/research/reports/2011/06/un-convention-on-the-law-of-the-sea-erodes-us-sovereignty-over-us-extended-continental-shelf>, <http://continentalshelf.gov/> & <http://continentalshelf.gov/media/ECSposterDec2010.pdf>; U.S. BOEM Outer Continental Shelf Oil and Gas Leasing Program for 2012-2017 of 8 November 2011 at http://www.offshore-mag.com/index/article-display/7142251034/articles/offshore/regional-reports/us-gulf-of-mexico/2011/November/boem-announces_proposed.html, <http://www.oceanlaw.org/> and *infra* note 137. See also Bahamas’ Preliminary Submission of 12 May 2009, para.17, to be replaced by actual Submission to the CLCS on or before 13 May 2019 http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/bhs2009preliminaryinformation.pdf & http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; Bahamas/USA Maritime Delimitation, Including Their Outer CS Beyond 200 Miles at http://www.un.org/depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/turnquest_0506_bahamas.pdf. On the future *Canada/USA Gulf of Maine* outer CS boundary, see *infra* notes, 77, 81-88. Canada’s CLCS deadline is in November 2013, while the 10-year time limit of the USA will only start running after its accession to the UNCLOS in the future.

UNCLOS Part XV, Section 1 (own choice procedures) and Sections 2-3 (compulsory procedures). The basic rationale of such practice stems from the fundamental rule that: “The delimitation of sea areas has always an international aspect” and, thus, cannot be established unilaterally, but must be effected by states jointly or by judicial/arbitral fora concerned.²³

There is nowhere in the UNCLOS or CLCS Rules any indication in support of the misconceived suggestion of Faroes Legal Adviser Bjorn Kunoy that the ICJ or any other courts cannot assume jurisdiction over delimitation of the outer continental shelf beyond 200 miles until after this outer shelf was first determined by the CLCS. To the contrary, the wording of all the respective “savings provisions” and their interpretation by the *Virginia Commentary* quoted above, as well as the vast state practice of Submissions made to the CLCS, are clear in suggesting that the CLCS’ determinations must in no way encroach upon existing and prospective boundary delimitations, nor must they prejudice other land or maritime disputes, which can thus well be adjudicated-arbitrated or otherwise resolved prior or in parallel to or sometimes in a follow-up to the CLCS’ involvement.²⁴ Accordingly, the statement in the 2007 *Nicaragua v. Honduras Territorial and Maritime Dispute (Merits)* Judgment that “any claim of continental shelf rights beyond 200 miles must be in accordance with Article 76 of UNCLOS and reviewed by the CLCS established thereunder” cannot be construed as contradicting the foregoing interpretation, but should be regarded as a courtesy recognition by the principal judicial organ of the United Nations, ICJ, of the work of the CLCS; were the ICJ or any other court, or states themselves, to delimit the outer CS beyond 200 miles prior to the completion of the CLCS process, the CLCS review - notwithstanding whether such boundaries do or do not border on the International Seabed Area - will be confined to its being informed about, or its using such boundary lines (as the CLCS did with the 2000 Mexico/USA Treaty in its 2009 CLCS Recommendations on Mexico’s 2007 Partial (Western Gulf of Mexico) Submission).²⁵

As will be further analyzed in this article, all provisions other than para.1 of Annex I to the CLCS Rules of Procedure are in practice - within compatible implementation of the fundamental principle laid down in UNCLOS Article 76(10) - being applied by the CLCS both to disputed and non-disputed pending boundary delimitations. Such other provisions concern duties of states making their Submissions to the CLCS, which further confirm that disputed and undisputed boundaries can be delimited independently from the CLCS determination and which are articulated in para.2 of Annex I as follows:

²³For judicial precedents of this principle, see Kwiatkowska, *Decisions of the World Court* (2010), *supra* note 1, at 108-109.

²⁴For unfounded suggestion of Faroes Legal Adviser Kunoy that the CLCS’ determination must precede maritime boundary delimitation by the ICJ or other courts, see *supra* note 8 and discussion of his inspiration by the Southern Banana Hole practice, *infra* notes 30-34. For correct analysis, see, e.g., Lathrop, “Continental Shelf Delimitation Beyond 200 Nautical Miles,” in: Colson/ASIL IMB, Vol.VI, 4147 (2011) at <http://www.brill.nl/international-maritime-boundaries-2>, *supra* note 3, who lists as the first of five different approaches taken by states to address unresolved disputes: (1) to settle delimitations *prior to making a Submission*. Other four approaches identified by Lathrop are to: (2) make a Partial Submission that avoids unresolved disputes; (3) make a Joint Submission among several states, thereby internalizing any unresolved disputes within the group of submitting states; (4) make a Separate Submission after consultation with neighbouring states in order to avoid objection; and (5) make a separate Submission without assurances of no objection.

²⁵*Nicaragua v. Honduras Territorial and Maritime Dispute (Merits)* Judgment, ICJ Reports 2007, 759, para.319; *infra* notes 34, 59, 76-80 and 244-250.

2. In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States, or in other cases of unresolved land or maritime disputes, related to the submission, the Commission shall be:

(a) Informed of such disputes by the coastal States making the submission;
and

(b) Assured by the coastal States making the submission to the extent possible that the submission will not prejudice matters relating to the delimitation of boundaries between States.

One possibility of so required assurance that “that the submission will not prejudice matters relating to the delimitation of boundaries” may be only Partial Submission to the exclusion of the disputed outer CS beyond 200 miles, as provided for by para.3 of Annex I of the CLCS Rules of Procedure:

3. A submission may be made by a coastal State for a portion of its continental shelf in order not to prejudice questions relating to the delimitation of boundaries between States in any other portion or portions of the continental shelf for which a submission may be made later, notwithstanding the provisions regarding the ten-year period established by Article 4 of Annex II to the Convention.

Such Partial Submission is a strong indication that the ICJ or other courts (or coastal states themselves) are competent to effect delimitation of the outer CS in areas which are excluded from this Partial Submission and are thus not subject to the CLCS determination. Such exclusion can be directly effected by the coastal states concerned. For example, Ireland made at first only 2005 Partial (Porcupine Abyssal Plain) Submission to the exclusion of the Hatton-Rockall Plateau involving unresolved boundaries between Ireland and Britain (already having 1988 Delimitation Agreement) on the one hand and Denmark (Faeroes) and Iceland on the other. China made at first only 2009 Preliminary Partial (East China Sea) and the Philippines - only 2009 Partial (Benham Rise) Submissions, which both have envisaged their Partial (South China Sea) Submissions in the future. India’s 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission reserved its right to make in a future another Partial (Southern Bay of Bengal) Submission based on Annex II of the UNCLOS III Final Act, which was so far used not only by Sri Lanka’s 2009 Submission, but also by Submissions of Myanmar (2008) and Kenya (2009), while Submissions of Maldives (2009) and Bangladesh (2011) reserved their rights to comment when more information on this Final Act’s Annex II will be available in the future. And Nicaragua’s 2010 Preliminary Partial Submission stated that it will consider further determination of the outer CS beyond 200 miles in the southwestern part of the Caribbean Sea only after the ICJ has rendered in the future its *Nicaragua v. Colombia Territorial and Maritime Dispute (Merits)* Judgment. The

same effect was implied by Peru's 2010 Note Verbale on Chile's 2009 Preliminary Submission in the context of the ICJ *Peru v. Chile Maritime Delimitation* case.²⁶

Alternatively, exclusion of the disputed and/or not yet delimited areas from the CLCS consideration can occur as a result of protests of other states parties to such disputes/delimitations. For instance, France's 2007 Partial (French Guyana and New Caledonia) Submission requested the CLCS only as a result of Vanuatu's protest (followed by France's reply), to exclude the region involving Hunter and Matthew Islands disputed by France with Vanuatu from the Commission's consideration, while UK Note Verbale rejected those parts of Argentina's 2009 Submission which claim outer CS around the Falkland, South Georgia and South Sandwich Islands and requested that the CLCS does not examine those parts of Argentina's Submission.

Another possibilities of assuring that a Submission will not prejudice maritime boundary delimitation or other unresolved land or maritime disputes include non-consideration of a Submission or consideration of a Submission with prior consent of all parties to such pending delimitations and disputes. As paras 5 and 6 of Annex I to the CLCS Rules of Procedure provide:

5. (a) In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute. However, the Commission may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute.

(b) The submissions made before the Commission and the recommendations approved by the Commission thereon shall not prejudice the position of States which are parties to a land or maritime dispute.

6. The Commission may request a State making a submission to cooperate with it in order not to prejudice matters relating to the delimitation of boundaries between opposite or adjacent States.

The frequently used, pursuant to para.5 quoted above, requirement of prior consent is exemplified by the 2004 Submission of Australia which determined the outer limits of its continental shelf beyond 200 miles in the regions of Kerguelen Plateau (involving Australia's Sub-Antarctic Heard and McDonald Islands and France's Kerguelen Archipelago) and Three Kings Ridge (involving Australia's Norfolk Island and Hunter and Matthew Islands disputed by France and Vanuatu) with prior express consent having been communicated by France to the CLCS for its making Recommendations on those parts of the Australian shelf bordering on French territories in these two regions without prejudice to any future Australia/France delimitations. Such a prior express consent was also indicated to New Zealand by Fiji and Tonga with respect to the outer continental shelf in the Northern region covered by New Zealand's 2006 Partial Submission, without prejudice to then pending NZ/Fiji and NZ/Tonga

²⁶Another approach was exemplified by Bangladesh's 2011 Submission, which requested the CLCS to make Recommendations on the disputed outer CS areas overlapping with Myanmar and India, but to do so without prejudice to the outcome of the then pending UNCLOS Annex VII *Bangladesh/India* and ITLOS *Bangladesh/Myanmar* cases, *infra* notes 228-249. It remains to be seen if the CLCS will wait for these cases being resolved and if it will only issue thereafter its Recommendations on Submissions of Myanmar (2008), India (2009) and Bangladesh (2011) analyzed further in this article below. On readiness of both Angola (2009) and DR Congo (2010) to resolve their dispute "through the relevant mechanism provided for by international law", see *infra* notes 326 & 328.

delimitations of their shelves beyond 200 miles which depend on a prior resolution of Fiji/Tonga Minerva Reef and delimitation dispute. Similarly, Norway obtained for the purposes of its 2006 Submission to the CLCS, prior consent of third states concerned, i.e., of Iceland and Denmark/Faroes and Greenland with respect to Southern Banana Hole and Svalbard/Greenland area, and of Russia with respect to the Barents Sea Loop Hole and Arctic Ocean (Svalbard/Franz Josef Land), where the CLCS was requested to recommend the limits of Norway's outer continental shelf beyond 200 miles without prejudice to the then pending boundary delimitations with those states.

Japan filed its 2008 Submission upon consent of both the United States and Palau with respect to not prejudicing Japan/U.S. Northern Marianas and Japan(Okinotorishima)/Palau maritime delimitations respectively, and the ensuing 2009 Palau's Submission specified that it did not prejudice bilateral maritime delimitations between Palau and Japan, Indonesia, Philippines and Micronesia. Barbados expressly noted in its 2008 Submission that the governments of Suriname, Guyana and France (French Antilles and Kerguelens) have each agreed not to object to the consideration by the CLCS of Barbados' Submission and the same was noted in the ensuing Suriname's 2008 Submission with respect to consent obtained from the governments of France (French Guyana), Barbados, Guyana, Trinidad and Tobago and Venezuela. Mozambique's 2009 Preliminary and 2010 Submissions relied upon prior consent of Madagascar [whose 2011 Submission was based on Mozambique's consent] and South Africa, whose 2009 Submission informed the CLCS that it was filed upon mutual prior consent of Mozambique and Namibia and that it had to be considered by the CLCS without prejudice to their future maritime delimitations. The preliminary and actual Submissions of ECOWAS member states - Nigeria, Ghana, Cote d'Ivoire, Benin and Togo - and their pertaining Notes Verbales were all filed pursuant to the ECOWAS Understanding on their "no objection" (a prior consent) to making by the CLCS its Recommendations on their Submissions without prejudice to the prospective delimitations of these states in the Gulf of Guinea. Such prospective - be them disputed or undisputed - delimitations of the Gulf of Guinea/ECOWAS and other West and East African states are all qualified in their Submissions as disputes falling within the ambit of Rule 46 and Annex I of the CLCS Rules of Procedure.

The Caribbean practice exemplified above - also occurring in South and Southeast Asia and elsewhere - illustrates that notwithstanding that they widely claim (in their Submissions) Absence of Disputes, coastal states feel obliged - for as long as their (disputed and undisputed) maritime delimitations or other land or maritime disputes are pending - to obtain the prior consent of the other states concerned for the purpose of their Submissions. If maritime delimitation or other dispute has already been resolved before a particular Submission was filed with the CLCS, the consent of the other party is not being sought for the purposes of that Submission, e.g., Mexico did not seek the prior consent of the United States for its 2007 Partial (Western Gulf of Mexico) Submission, because this Submission was preceded by the 2000 Mexico/USA Treaty, while Barbados did not seek the prior consent of Trinidad & Tobago for its 2008 Submission, because this Barbadian Submission was preceded by the "final and binding" 2006 *Barbados/Trinidad & Tobago (Jurisdiction and Merits)* Award analyzed below.

States would also not seek consent if there already exist treaties delimiting their EEZ/CS areas up to 200 miles which require extension into areas of the outer CS beyond 200 miles in the future, e.g., Brazil (2004) and Uruguay (2009), whose 1972 Brazil/Uruguay Demarcation of the Sea Outlet of the Arroyo Chui and Maritime Delimitation Agreement requires extension beyond 200 miles, did not seek consent for their

respective Submissions. Kenya's 2009 Submission did not refer to seeking consent of Tanzania for extension of their 1976 TS/EEZ Delimitation Agreement, but Tanzania's 2009 Preliminary Submission (issued one day later) expressly stated that it was consented to by Kenya (and Seychelles) upon understanding that this Preliminary Submission was without prejudice to bilateral delimitations of their overlapping outer CS areas. This understanding was confirmed by the final 2012 Tanzania's Submission which added that the boundary drawn under the 1976 Kenya/Tanzania TS/EEZ Delimitation Agreement was extended further seaward under their 2009 Outer Continental Shelf Delimitation Agreement, and that the 2002 Seychelles/Tanzania EEZ/CS Delimitation Agreement was supplemented by their 2011 Memorandum of Understanding (MOU) spelling out a no prejudice to each Submission pursuant to UNCLOS Article 76(10) in areas where there could be potential overlaps.

Indonesia did not seek a prior consent of India for projecting in Indonesia's 2008 Partial (North West of Sumatra) Submission of apparent extension of equidistance drawn by the 1974-1977 India (Southern Nicobar Islands)/Indonesia (Sumatra) Continental Shelf Agreements, even though in reply to India's Note Verbale, Indonesia's 2009 Note Verbale then expressly confirmed the applicability of the 1974-1977 Agreements to their future outer CS delimitation. Myanmar did not seek for the purpose of its 2008 Submission (Rakhine Continental Shelf) a prior consent of India for extension beyond Point 16 of a boundary drawn under the 1986 India (Andaman Islands)/Myanmar Maritime Boundary Delimitation Treaty, but India's 2009 Note Verbale on Myanmar's 2008 Submission and Myanmar's Note Verbale on the ensuing India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission made it clear that they consented to seeking such an extension.

The foregoing India/Indonesia and India/Myanmar exchanges exemplify that in some cases of pending maritime delimitations or other land or maritime disputes, other states express their consent not prior, but in a close follow-up, to Submissions. Some additional examples are those of consent of Suriname for France's 2007 Partial (New Caledonia and French Guyana) Submission, or of consent of the United States and Mexico in regard of Cuba's 2009 Partial (Eastern Gulf of Mexico) Submission. In the case of Palau's 2009 Submission, the Philippines was duly notified in advance about this Submission, but after it was filed, Philippines tried to prevent the CLCS from making any Recommendations on this Submission's Western part involving Palau/Philippines outer CS boundary; Palau opposed it stressing that CLCS Recommendations will be without prejudice to this pending outer CS boundary and Palau invited Philippines to carry out their delimitation negotiations.

An example of what could be called "a qualified consent" is provided by practice of Denmark (Faroes), of which CLCS deadline is only in November 2014 and which - pending quadrilateral negotiations of Denmark (Faroes)-Ireland-UK-Iceland - gave its consent to the CLCS for making Recommendations on the UK's and Ireland's 2009 Partial (Hatton-Rockall Plateau) Submissions upon a strict condition that Denmark's 2010 Partial (Faroes-Rockall Plateau) Submission, which claimed its outer CS as far as 820 miles south

of the Faroes, will be considered by the CLCS simultaneously.²⁷ Iceland's 2009 Partial (Aegir Basin & Western-Southern Reykjanes Ridge) Submission specified in its Section 4: Absence of Disputes that this Submission did not cover the Eastern Reykjanes Ridge, because it potentially overlaps the Hatton-Rockall area which is in dispute and will be covered by another Iceland's Partial Submission in the future.²⁸ In its preceding 2007 Recommendations (Section D: Matters Related to Unresolved Disputes) on Ireland's 2005 Partial (Porcupine Abyssal Plain) Submission, the CLCS itself noted that Ireland has overlapping claims with Denmark/Faroes and Iceland for the outer CS in Hatton-Rockall area to the northwest of the area of the 2005 Partial Submission, and therefore the CLCS confirmed that its 2007 Recommendations are without prejudice to any future Submission made by any state with respect to the outer CS and the question of delimitation.²⁹

In the case of Submissions in the Bay of Bengal, Bangladesh was not asked for a prior consent for and, therefore, it protested against, the 2008 Submission (Rakhine Continental Shelf) of Myanmar and the 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission of India, both of which were made without prejudice to their outstanding maritime delimitations (even though neither Myanmar nor India admitted the existence of any disputes between them and other states). By means of its Applications of 8 October 2009, Bangladesh then instituted two UNCLOS Annex VII *Bay of Bengal Maritime Delimitation* Arbitrations against Myanmar and India, of which the *Bangladesh/Myanmar* was rechannelled in early 2010 to the ITLOS. In its ensuing 2011 Submission, Bangladesh assured the CLCS that this Submission covered the overlapping areas of the outer CS beyond 200 miles, but was without prejudice to any matters forming the subject of the parallel Annex VII and ITLOS *Bay of Bengal* proceedings. However, Myanmar's Note

²⁷Ireland's and the UK's 2009 Partial (Hatton-Rockall Area) Submissions, Section 5: Areas of Overlapping Interest and Notes Verbales of Iceland and Denmark (Faroes) of 27 May 2009 and Denmark of 2 December 2010 at www.un.org/Depts/los/clcs_new/submissions_files/submission_irl1.htm, www.un.org/Depts/los/clcs_new/submissions_files/submission_gbr1.htm; Iceland's Protest of 1 April 2009 at www.guardian.co.uk/2009/apr/01/britain-iceland-hatton-rockall-oil; C.R. Symmons, "The Maritime Border Areas of Ireland, North and South" (2009) 24 IJMCL 457-500 at <http://www.brill.nl/estu>; Statement by the CLCS Chairman, UN Doc. CLCS/64 (1 October 2009) at www.un.org/Depts/los/; Denmark's (Faroes') 2010 Partial (Faroes-Rockall Plateau) Submission, Section 7: Maritime Delimitations at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_dnk_54_2010.htm; <http://www.irishtimes.com/newspaper/ireland/2010/1204/1224284774280.html> & http://www.dur.ac.uk/ibru/news/boundary_news/?itemno=11258&rehref=%2Fibru%2Fnews%2F&resubj=Boundary+news%20Headlines & <http://www.dur.ac.uk/ibru/news/>; Statement by the CLCS Chairman, UN Doc. CLCS/70 (11 May 2011) at www.un.org/Depts/los/clcs_new/clcs_home.htm; 2014 Partial (Arctic) Submission of 18 May 2011 at http://www.theglobeandmail.com/news/world/europe/denmark-prepares-to-claim-north-pole/article2026083/?utm_medium=feed&utm_source=feedburner&utm_campaign=Feed%3A+TheGlobeAndMail-Front+%28The+Globe+and+Mail+-+Latest+News%29; *supra* note 3.

²⁸Iceland's 2009 Partial (Aegir Basin & Western-Southern Reykjanes Ridge) Submission, Section 4: Absence of Disputes: Aegir Basin & Western-Southern Reykjanes Ridge at www.un.org/Depts/los/clcs_new/submissions_files/submission_isl_27_2009.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3.

²⁹CLCS Recommendations on Ireland's 2005 Partial (Porcupine Abyssal Plain) Submission, Section D: Matters Related to Unresolved Disputes at www.un.org/Depts/los/clcs_new/submissions_files/submission_irl.htm & http://www.un.org/Depts/los/clcs_new/submissions_files/irl05/irl_rec.pdf; www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3. See also C.R. Symmons, "The Irish Partial Submission to the CLCS in 2005" (2006) 37 ODIL 299-317 and D.R. Rothwell, "Issues and Strategies for Outer Continental Shelf Claims" (2008) 23 IJMCL 185, at 204-205 at <http://www.brill.nl/estu>.

Verbale of 31 March 2011 protested Bangladesh's Submission on the ground that Bangladesh has no outer CS beyond 200 miles, not even CS up to 200 miles.

Alternatively to Partial Submission excluding disputed areas and/or to full-fledged Submission covering disputed areas subject to consent of all states concerned, two or more coastal states can according to para.4 of Annex I make a Joint or separate Submissions requesting the CLCS by Agreement to delineate the outer CS without regard to the delimitation of boundaries between those states or with an indication, by means of geodetic coordinates, of the extent to which a Submission is without prejudice to the matters relating to the delimitation of boundaries with other states parties to this Agreement. Making "best efforts to effect an Agreement with Japan in accordance with para.4 of Annex I" was suggested in the 2002 CLCS Recommendations on the inaugural Russia's Submission with respect to the northern part of the Okhotsk Sea involving the disputed Northern Territories (Southern Chishima)/Southern Kurils. Kenya and Somalia concluded Memorandum of Understanding (MOU) of 7 April 2009, granting each other no-objection with respect to their Submissions to the CLCS, but ratification of this MOU was rejected by the Transitional Federal Parliament of Somalia on 1 August 2009. The 2011 Seychelles/Tanzania MOU spelled out a no prejudice to each of their Submissions (of 2009 and 2012) pursuant to UNCLOS Article 76(10) in areas where there could be potential overlaps. Madagascar and Mozambique agreed on 30 January 2009 to Harmonization of Their Extended CS Submissions (of 2011 and 2010 respectively), to be followed by their maritime delimitation Agreement in the future.

An interesting variation of Agreement envisaged in para.4 of Annex I of the CLCS Rules of Procedure was provided by the 2006, Denmark (Faroese)/Iceland/Norway (Mainland & Jan Mayen) Interim Outer Continental Shelf Agreement, which provisionally delimited their shelves beyond 200 miles in the Northeast Atlantic's Southern Banana Hole of 111,500 square kilometres in total, by allocating 27,000 to Faroese, 29,000 to Iceland and 55,500 to Norway, subject to the future confirmation of these claims by the CLCS and if appropriate, adjustment in accordance with CLCS Recommendations of such tentatively allocated areas under Interim Agreement.³⁰ This was confirmed in the subsequent Norway's Submission to the CLCS of 27 November 2006, which specified that the Interim Agreement on the Southern Banana Hole remains without prejudice to the CLCS Recommendations, which in turn will be without prejudice to the future Submissions of Iceland and Denmark/Faroese and to bilateral delimitations of the outer continental shelves of these states to be effected in the future - after the CLCS issued its Recommendations - with Norway/mainland and Jan Mayen,

³⁰Denmark (Faroese)/Iceland/Norway (Mainland & Jan Mayen) Interim Outer Continental Shelf (Southern Banana Hole) Agreement of 20 September 2006 at www.rigzone.com/news/article.asp?a_id=36532; 23 September 2008 at http://www.norway-un.org/News/Archive_2006/Important_agreement/.

representing geologically part of its own small continent (Jan Mayen Micro-Continent).³¹ The outer CS limits beyond 200 miles in the Southern Banana Hole (Aegir Basin) were in addition to Norway's 2006 Submission and 2009 CLCS Recommendations,³² also suggested in parallel Partial Submissions of Denmark with Faroe Islands and Iceland subject to their respective consent for each of these Submissions and without prejudice to the future delimitation of the outer CS beyond 200 miles between Iceland and Denmark/Faroes.³³ Both Denmark's and Iceland's 2009 Submissions noted (as previously Norway's 2006 Submission did) that the final delimitation lines will be determined through bilateral agreements to be concluded after the CLCS has considered the documentation submitted by the three states and after it made its Recommendations. In their Notes Verbales of 15 June and 7 July 2009 on Denmark's Partial (Southern Banana Hole) Submission, Iceland and Norway declared that in accordance with their trilateral 2006 Southern Banana Hole Interim Agreement referred to above, neither of them had any objections to the CLCS making Recommendations on this Denmark's Partial Submission, without prejudice to the question of bilateral outer CS delimitations between the three states concerned.

It appears that it was this Southern Banana Hole practice of Norway, Denmark/Faroes and Iceland envisaging their final maritime delimitations after the CLCS completed its Recommendations, that most likely inspired Faroes Legal Adviser to

³¹Norway's 2006 Submission, Section 6: Maritime Delimitations and Other Issues, and Notes Verbales of: Denmark of 24 January 2007, Iceland of 29 January 2007, Russia of 21 February 2007 and Spain of 3 March 2007 at www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm; *UN Secretary-General Oceans Report*, UN Doc.A/63/63, paras 27-28 (2008); 22nd CLCS Session, 18 August-12 September 2008, *Press Release SEA/1908* of 12 September 2008 at www.un.org/News/Press/docs//2008/sea1908.doc.htm; CLCS Recommendations on Norway's 2006 Submission of 27 March 2009: Barents Sea Loop Hole, Arctic Western Nansen Basin, Norwegian and Greenland Seas Banana Hole at http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_rec_summ.pdf & www.un.org/Depts/los/clcs_new/clcs_home.htm; and *supra* note 3. See also T. Pedersen and T. Henriksen, "Svalbard's Maritime Zones: The End of Legal Uncertainty?" (2009) 24 *IJMLC* 141, 148-157 at <http://www.brill.nl/estu>; O. Jensen, "Norway's Outer Continental Shelf Limits in the Arctic", *Security Brief of the Norwegian Atlantic Committee* (4-2010) at <http://www.atlanterhavskomiteen.no/files/atlanterhavskomiteen.no/Documents/Publikasjoner/KortInfo/2010/kortinfo%204%202010%20korr.pdf>; O. Jensen, "Norway's Submission and the CLCS Recommendations", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalization* (2010) 521-538 at http://www.fni.no/doc&pdf/OYJ_Ch_28_offprint.pdf; Norway Oil Maps at www.rigzone.com/news/image_results.asp?ctry_id=156, including CS Limits at www.rigzone.com/news/image_detail.asp?img_id=2457&a_id=25194.

³²In the Southernmost part of the Banana Hole, the 2009 CLCS Recommendations on Norway's 2006 Submission rejected a small triangular area off Jan Mayen, but this part of the seabed is located far south of the provisional maritime boundary under the 2006 Southern Banana Hole Agreement referred to above and would, therefore, most likely have formed part of the outer CS of Faroes anyway, and not Norway at http://www.un.org/Depts/los/clcs_new/submissions_files/nor06/nor_rec_summ.pdf & www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm, *supra*.

³³Denmark/Faroe Islands' 2009 Partial (Southern Banana Hole) Submission to the CLCS, Section 7: Maritime Delimitations; Iceland Note Verbale of 15 June 2009 and Norway's Note Verbale of 7 July 2009 at www.un.org/Depts/los/clcs_new/submissions_files/submission_dnk_28_2009.htm; Iceland's 2009 Partial (Aegir Basin & Western-Southern Reykjanes Ridge) Submission, Section 4: Absence of Disputes: Aegir Basin & Western-Southern Reykjanes Ridge; Denmark's Note Verbale of 15 June 2009 and Norway's Note Verbale of 7 July 2009 at www.un.org/Depts/los/clcs_new/submissions_files/submission_isl_27_2009.htm; Statement by the CLCS Chairman, UN Doc. CLCS/64 (1 October 2009) at www.un.org/Depts/los/ & www.un.org/Depts/los/clcs_new/clcs_home.htm; and *supra* note 3. Rockall by Wikipedia at <http://en.wikipedia.org/wiki/Rockall>, at 5, noting that Iceland began in 2001 working on its submission to the CLCS - by surveying 1.3 million square kilometres of the sea-bed and ocean floor. On Iceland's Biggest Oil Programme in Its History, see 16 November 2005 at www.rigzone.com/news/article.asp?a_id=27031.

searching for arguments against upholding by the ICJ or other courts of jurisdiction over the outer CS delimitation prior to issuing by the CLCS of its Recommendations. However, while the coastal states of the Southern Banana Hole were of course welcomed to withhold their outer CS delimitations until after the CLCS issued its Recommendations, this - as was already stated earlier - cannot be extended to denying jurisdiction of the ICJ or other courts (such as was the UNCLOS Annex VII *Barbados/Trinidad & Tobago* Arbitral Tribunal) until after the CLCS completed its work; the judicial/arbitral settlements or direct negotiations leading to treaties can take place prior, in parallel to or sometimes in a follow-up to the engagement of the CLCS.³⁴

The Joint Submissions by two or more states, which were pioneered by the 2006 Joint Submission of France, Ireland, Spain and the United Kingdom in respect of the Celtic Sea and the Bay of Biscay, followed by the 2008 Joint Submission of Mauritius and Seychelles in respect of Mascarene Plateau, the 2009 Preliminary Joint Partial (Charlotte Bank Region) Submission of Fiji and Solomon Islands, the 2009 Joint Preliminary Submission of Fiji, Solomon Islands and Vanuatu, the 2009 Joint Submission of Micronesia, Papua New Guinea and Solomon Islands, and the 2009 Benin/Togo's Updated Joint Preliminary Submission, may also enhance development assistance in ocean affairs by industrialized to developing states, as occurred in the case of, e.g., the 2009 Joint Submission of France and South Africa in respect of Prince Edward Islands and Crozet Archipelago.³⁵ Otherwise industrialized states may also provide non-neighbouring developing countries with the required assistance as, e.g., Norway did by signing an Agreement to assist 6 West African states in preparing their Submissions, with the aim of enabling them to exercise their sovereign rights to natural resources on their continental shelves.³⁶ All Joint Submissions render the requirement of consent under para.5 of Annex I of the CLCS Rules quoted above unnecessary and may be indicative of the trend that in future resolution of their territorial and maritime delimitation disputes, the coastal states concerned - e.g., France/South Africa - would rely on a *compromis* under ICJ Statute's Article 36(1) or another compromissory clause rather than on unilateral application based upon Optional Clause under Statute's Article 36(2) or upon Annex VII of the UNCLOS Part XV, Section 2.

³⁴ See remarks on unfounded approach of Faroes Legal Adviser Kunoy (2010) 25 IJMCL 237-270, *supra* notes 8, 16-26. On Submissions to the CLCS involving Faroes-Rockall Plateau, see *supra* notes 27-29.

³⁵ See *infra* notes 310-315.

³⁶ Statement of Norway, in 65th UNGA Adopts Two Oceans Resolutions, UN Doc.GA/11031 of 7 December 2010, at 10 at www.un.org/News/Press/docs//2010/ga11031.doc.htm.

Definition of the Term “Dispute” under the UNCLOS and the CLCS Rules

The term "dispute" under the UNCLOS and the CLCS Rules (and likewise under any other treaties and instruments) is understood in accordance with its meaning established by the International Court of Justice which in the 1998 *Cameroon v. Nigeria Land and Maritime Boundary (Preliminary Objections)* Judgment recalled that:

"in the sense accepted in its jurisprudence and that of its predecessor [Permanent Court of International Justice], a dispute is a disagreement on a point of law or fact, a conflict of legal views or interests between parties (see *Mavrommatis Palestine Concessions* Judgment No.2, PCIJ, Series A, No.2, 11; *Northern Cameroons* Judgment, ICJ Reports 1963, 27; and *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947* Advisory Opinion, ICJ Reports 1988, 27, para.35)" (*East Timor (Portugal v. Australia)* Judgment, ICJ Reports 1995, 99-100, para.22);

and that,

in order to establish the existence of a dispute, "it must be shown that the claim of one party is positively opposed by the other" (*South West Africa (Preliminary Objections)* Judgment, ICJ Reports 1962, 328); and further, "Whether there exists an international dispute is a matter for objective determination" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase)* Advisory Opinion, ICJ Reports 1950, 74)" (ICJ Reports 1995, 100).³⁷

Moreover, if uncertainties or disagreements arise with regard to the real subject of the dispute with which the ICJ has been seised, or to the exact nature of the claims submitted to it: "It is for the Court itself, while giving particular attention to the formulation of the dispute chosen by the Applicant, to determine on an objective basis the dispute dividing the parties,

³⁷*Cameroon v. Nigeria (Preliminary Objections)* Judgment, ICJ Reports 1998, 314-315, para.87; as reaffirmed by *Liechtenstein v. Germany Certain Property (Preliminary Objections)* Judgment, ICJ Reports 2005, 18, para.24, *DR Congo v. Rwanda Armed Activities on the Territory of the Congo (Jurisdiction and Admissibility)* Judgment, ICJ Reports 2006, 40, para.90 and *Nicaragua v. Colombia Territorial and Maritime Dispute (Preliminary Objections)* Judgment, ICJ Reports 2007, 849 & 874, paras 41 and 138. For differences between "dispute" and "contestation", see *Mexico v. USA Interpretation of 2004 Avena Judgment (Provisional Measures)* Order, paras 53-54, ICJ Reports 2008, Joint Dissenting Opinion of Judges Owada, Tomka and Sir Kenneth Keith, paras 19-20; *Georgia v. Russia Application of the CEDR (Preliminary Objections)* Judgment, para.30, ICJ Reports 2011, Separate Opinion of Judge Donoghue at www.icj-cij.org; as discussed by Malcolm N. Shaw, *International Law* (Cambridge 6th Edition 2008) 1067-1070: The nature of a legal dispute at http://www.cambridge.org/gb/knowledge/isbn/item2327693/?site_locale=en_GB.

by examining the position of both parties [...], their diplomatic exchanges, public statements and other pertinent evidence".³⁸

With respect to distinction between political and legal disputes, the 2010 *Kosovo Advisory Opinion* has reinforced the Court's jurisprudence as follows:

Moreover, the Court has repeatedly stated that the fact that a question has political aspects does not suffice to deprive it of its character as a legal question (*Application for Review of Judgment No.158 of the United Nations Administrative Tribunal, Advisory Opinion, ICJ Reports 1973, 172, para.14*). Whatever its political aspects, the Court cannot refuse to respond to the legal elements of a question which invites it to discharge an essentially judicial task, namely, in the present case, an assessment of an act by reference to international law. The Court has also made clear that , in determining the jurisdictional issue of whether it is confronted with a legal question, it is not concerned with the political nature of the motives which may have inspired the request or the political implications which its Opinion might have (*Conditions of Admission of a State in Membership of the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, ICJ Reports 1947-1948, 61* and *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996 (I), 234, para.13*).³⁹

While examining questions of jurisdiction and admissibility, the Court - as the 2007 *Nicaragua v. Colombia Territorial and Maritime Dispute (Preliminary Objections)* Judgment held - is entitled, and in some circumstances may be required, to go into other questions which may not be strictly capable of classification as matters of jurisdiction and admissibility.⁴⁰ However, as the 1998 *Spain v. Canada Fisheries (Jurisdiction)* and the 2007 *Nicaragua v. Honduras Territorial and Maritime Dispute (Merits)* Judgments reaffirmed, the Court is also empowered to hold "inadmissible certain new claims, formulated during the course of proceedings, which, if they had been entertained, would have transformed the

³⁸*Spain v. Canada Fisheries Jurisdiction* Judgment, ICJ Reports 1998, 447-449, paras 29-32, quoting, *inter alia*, *Australia v. France Nuclear Tests* Judgment, ICJ Reports 1974, 262-263, the *Libya/Chad Territorial Dispute* Judgment, ICJ Reports 1994, 14-15, 28, the *New Zealand v. France Nuclear Tests* Order, ICJ Reports 1995, 304 and the *Qatar v. Bahrain (Jurisdiction and Admissibility)* Judgment, ICJ Reports 1995, 24-25; as reaffirmed by the 2000 *Southern Bluefin Tuna (Jurisdiction and Admissibility)* Award, para.48; *Liechtenstein v. Germany (Preliminary Objections)* Dissenting Opinion of Judge Owada, ICJ Reports 2005, 50, para.9; 2006 *Barbados/Trinidad and Tobago* Award, paras 68, 75, 196-198, 213-215 and 272-277 at www.pca-cpa.org; *Nicaragua v. Honduras (Merits)* Judgment, ICJ Reports 2007, 695, para.108; *Nicaragua v. Colombia (Preliminary Objections)* Judgment, ICJ Reports 2007, 848-849, paras 38, 41; *Georgia v. Russia Application of the CEDR (Preliminary Objections)* Judgment, ICJ Reports 2011, paras 23-114, Joint Dissent of President Owada, Judges Simma, Abraham and Donoghue and Judge *ad Hoc* Gaja, Separate Opinions of President Owada, Judges Simma, Abraham, Greenwood, Donoghue, Declarations of Vice-President Tomka, Judge Skotnikov. On distinction between a dispute under Article 36(2) of the ICJ Statute and a dispute within the meaning of Article 60 on Interpretation, see *Cambodia v. Thailand Interpretation of the 1962 Preah Vihear Judgment (Provisional Measures)* Order, ICJ Reports 2011, paras 22-32, 37 at www.icj-cij.org.

³⁹*Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* Advisory Opinion, ICJ Report 2010, para.27 and Separate Opinion of Judge Sepulveda Amor, paras 13-14, noting that the Court "has never shied away from a case brought before it merely because it had political implications" or declined a request for an advisory opinion merely because of its allegedly adverse political consequences at www.icj-cij.org.

⁴⁰*Nicaragua v. Colombia (Preliminary Objections)* Judgment, ICJ Reports 2007, 851, para.49, reaffirming *Nuclear Tests (Merits)* Judgments, ICJ Reports 1974, 259, para.22 and 463, para.22; *Northern Cameroons (Preliminary Objections)* Judgment, ICJ Reports 1963, 29.

subject of the dispute originally brought before it under the terms of the Application”.⁴¹ Although being formally a new claim, it can be found admissible if “the claim in question can be considered as included in the original claim in substance”.⁴² Within its consideration if such inclusion occurred in the case of a new claim presented in Nicaragua’s Final Submissions with respect to sovereignty over islands Bobely Cay, South Cay, Savanna Cay and Port Royal Cay, together with all other islands, cays, rocks, banks and reefs in the area in dispute, the Court reasoned as follows:

To draw a single maritime boundary line in an area of the Caribbean Sea where a number of islands and rocks are located the Court would have to consider what influence these maritime features might have on the course of that line. To plot that line the Court would first have to determine which State has sovereignty over the islands and rocks in the disputed area. The Court is bound to do so whether or not a formal claim has been made in this respect. Thus the claim relating to sovereignty is implicit in and arises directly out of the question which is the subject-matter of Nicaragua’s Application, namely the delimitation of the disputed areas of the territorial sea, continental shelf and exclusive economic zone.⁴³

Therefore, the 2007 *Nicaragua v. Honduras* Judgment concluded that Nicaragua’s claim to sovereignty over these islands and rocks was admissible “as it was inherent in the original claim relating to the maritime delimitation between Nicaragua and Honduras in the Caribbean Sea”, adding that Honduras as Respondent has neither contested the jurisdiction of the Court to entertain the Nicaraguan new claim and that Honduras claimed these islands and rocks in its Final Submissions itself.⁴⁴ Resolution of sovereignty issues prior to delimiting the

⁴¹*Nicaragua v. Honduras (Merits)* Judgment, ICJ Reports 2007, 695, para.108, reaffirming *Prince von Pless Administration Order*, PCIJ Series A/B, No.52, at 14 (1933); *Societe Commerciale de Belgique* Judgment, PCIJ Series A/B, No.78, at 173 (1939); *Nauru v. Australia Certain Phosphate Lands in Nauru (Preliminary Objections)* Judgment, ICJ Reports 1992, 265-267, paras 65, 69; *Spain v. Canada Fisheries (Jurisdiction)* Judgment, ICJ Reports 1998, 447, para.29.

⁴²*Nicaragua v. Honduras (Merits)* Judgment, ICJ Reports, 695-697, paras 109-116, esp. para.110.

⁴³*Id.*, 697, para.114.

⁴⁴*Id.*, at 697, paras 115-116. This *Nicaragua v. Honduras* Judgment’s test of the new claim being included in the original claim in substance or arising directly out of the question which is the subject-matter of the Application, ICJ Reports 2007, 697, paras 114-116, as preceded by the *FRG v. Iceland Fisheries Jurisdiction (Merits)* Judgment, ICJ Reports 1974, 203, para.72, coexists with the possibility envisaged by the *Cambodia v. Thailand Temple of Preah Vihear* Judgment, ICJ Report 1962, 36 that the new, additional claim must be implicit in the Application. Both these tests were reaffirmed by the *Guinea v. DR Congo Mr. Diallo (Merits)* Judgment, which rejected Guinea’s claim concerning Diallo’s arrests in 1988-1989 because of not meeting of either of these two tests and because submission of this Guinea’s new claim only at the Reply stage made it impossible for the DRC to assert preliminary objections to this claim, ICJ Reports 2010, paras 24-48, *dispositif* para.165(1), finding by 8:6 votes Guinea’s claim concerning Mr. Diallo’s arrest and detention in 1988-1989 to be inadmissible; Joint Dissenting Declaration of Judges Al-Khasawneh, Simma, Bennouna, Cancado Trindad & Yusuf; Dissenting Opinion of Judge *ad Hoc* Mahiou (designated by Guinea). Previously, *Costa Rica v. Nicaragua San Juan River Navigational and Related Rights* Judgment found Costa Rica’s new claim relating to its subsistence fishing to be admissible, ICJ Reports 2009, paras 137-139 and *dispositif* para.156(3) by 13:1 votes and Separate Opinion of Judge Sepulveda-Amor at www.icj-cij.org.

maritime (and likewise land⁴⁵) areas concerned had also occurred in the case of all islands covered by the 2001 *Qatar v. Bahrain Maritime Delimitation and Territorial Questions (Merits)* Judgment, or in that of the Red Sea Islands involved in the two-stage - territorial sovereignty and maritime delimitation - 1998/1999 *Eritrea/Yemen Awards*, or in the case of San Andres, Providencia and Catalina, which were reaffirmed by the 2007 *Nicaragua v. Colombia (Preliminary Objections)* Judgment as remaining under the sovereignty of Colombia, or other maritime features (islands, islets, reefs and cays) of the Archipelago of San Andres, which will be awarded to either party by the future *Nicaragua v. Colombia Territorial and Maritime Dispute; Costa Rica and Honduras Intervening (Merits)* Judgment.⁴⁶ The attributing of low-tide Fasht ad Dibal to Qatar (in whose TS it turned out to be located) in the 2001 *Qatar v. Bahrain (Merits)* Judgment illustrates that the sovereignty disputes can occasionally be resolved not prior to, but in the process of actual drawing of the maritime boundary.⁴⁷ Similarly, the 2008 *Malaysia/Singapore Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* Judgment held that low-tide South Ledge will be attributed to sovereignty of that state in the territorial waters of which it is located upon the effecting of the Malaysia/Singapore boundary delimitation.⁴⁸

⁴⁵See, e.g., resolution of sovereignty dispute over Bakassi Peninsula prior to delimitation of the land and maritime boundaries, in the *Cameroon v. Nigeria; Equatorial Guinea Intervening (Merits)* Judgments, ICJ Reports 2002, 303; and resolution of sovereignty dispute over uninhabited (and flooded for part of the year) Kasikili/Sedudu Island (of 3,5 square kilometres) located in international Chobe River prior to its boundary delimitation, in the *Botswana/Namibia Kasikili/Sedudu Island* Judgment, ICJ Reports 1999, 1045; (2000) 39 ILM 310 and Namibia's Statement of 13 December 1999 at www.namibian.com/na/Netstories/December99/ko.html.

⁴⁶*Nicaragua v. Colombia Territorial and Maritime Dispute (Preliminary Objections)* Judgment, ICJ Reports 2007, 833; UN Court Rules Disputed Islands in Caribbean Sea Belong to Colombia of 13 December 2007 at www.un.org/apps/news/story.asp?NewsID=25046&Cr=icj&Cr1, www.colombiaemb.nl/comunicadomre13dic.htm, <http://news.bbc.co.uk/2/hi/americas/7142890.stm> and Colombia President Uribe's Speech at <http://web.presidencia.gov.co/sp/2007/diciembre/13/22132007.html> & www.eltiempo.com/politica/2007-12-14/ARTICULO-WEB-NOTA_INTERIOR-3859454.html; Statement of President Rosalyn Higgins to the 60th ILC of 22 July 2008 at www.icj-cij.org/presscom/files/1/14651.pdf, at 3-5; B. Kwiatkowska, "The 2007 *Nicaragua v. Colombia Territorial and Maritime Dispute (Preliminary Objections)* Judgment: A Landmark in the Sound Administration of International Justice" (2008) 8 *The Global Community Yearbook of International Law and Jurisprudence* 177-217 at <http://ukcatalogue.oup.com/product/9780379214758.do> & www.us.oup.com. On the *Nicaragua v. Colombia* territorial questions and maritime delimitation, see also M. Pratt, "The Honduras/Nicaragua Boundary" (2001 No.2) 9 *IBRU Boundary & Security Bulletin* 108-116 at www.dur.ac.uk/ibru/publications/bulletin; *UN Secretary-General Oceans Reports*, UN Docs A/55/61, para.249 (2000), A/57/57, paras 44, 564-567 (2002) and A/59/62, para.37 (2004); Nicaragua's Law No.420 on Maritime Areas of 5 March 2002, proclaiming its 200-mile EEZ [instead of claimed until then 200-mile TS] and 350-mile(sic!) continental shelf, *La Gaceta [Diario Oficial], Managua* (22 March 2002 No.57) at www.un.org/Depts/los/ and Colombia's Department of San Andres & Providencia at http://en.wikipedia.org/wiki/San_Andres_and_Providencia; J. Donaldson and M. Pratt, "International Boundary Developments" (2004) 9 *Geopolitics* 501, 527-529, including Map; V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 269-270, 350-351 and Figure 14.1 at 606 at <http://www.brill.nl/maritime-political-boundaries-world>; two surprising *Nicaragua v. Colombia (Costa Rica's Application to Intervene)* and *Nicaragua v. Colombia (Honduras' Application to Intervene)* Judgments, ICJ Rep. 2011, which dismissed Applications of both Costa Rica and Honduras to intervene as non-parties into the *Nicaragua v. Colombia* proceedings in regrettable reversal of liberal trend established by the unanimous *Cameroon v. Nigeria (Application of Equatorial Guinea for Permission to Intervene)* Order, ICJ Reports 1999, 1029, *infra* note 337.

⁴⁷*Qatar v. Bahrain Maritime Delimitation and Territorial Questions (Merits)* Judgment, ICJ Reports 2001, para.220.

⁴⁸*Malaysia/Singapore Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* Judgment, ICJ Reports 2008, paras 291-299; and *supra* note 12.

In the pending territorial disputes relevant to the delimitations of the continental shelf beyond 200 miles (extending under Article 76(1) beyond the territorial sea up to the outer edge of the continental margin) between opposite/adjacent states, the CLCS' obligation to act so as not to prejudice land or maritime disputes can be, therefore, regarded as providing an important incentive for the peaceful settlement of not only delimitation but also sovereignty disputes over insular territories. This is illustrated by the CLCS 2002 Recommendations concerning the region of the northern Sea of Okhotsk covered by the pioneering Russia's 2001 Submission and involving the longstanding territorial Japan/Russia dispute over the Northern Territories/Southern Kurils, in the case of which Russia was requested by the CLCS to make its best efforts to resolve this dispute by an Agreement with Japan in accordance with para.4 of Annex I of the CLCS Rules of Procedure.⁴⁹ Another example could occur in the future with respect to, e.g., UN *Equatorial Guinea/Gabon* dispute over islands in the Corisco Bay, provided this matter is not resolved prior to the CLCS Recommendations on Submission made by either of the parties on the outer continental shelf limits. And *vice versa*, were a *Corisco Bay* resolution to occur earlier, it would likely enhance Equatorial Guinea/Gabon cooperation in preparation of their submissions to the CLCS and the delimiting of their shelves beyond 200 miles, in a similar way as the two UNCLOS Annex VII *Barbados/Trinidad and Tobago* and *Guyana/Suriname* Awards increased the cooperative spirit of the parties to prepare Submissions on their potentially overlapping claims to the outer continental shelves beyond 200 miles, also overlapping with claims of non-UNCLOS party (being, thus, not obliged to make its Submission), Venezuela, which is in addition involved in the UN *Guyana/Venezuela* Mediation.⁵⁰ Another kind of complicated dimension is involved in Maldives' 2010 Submission concerning its shelf beyond 200 miles in that the neighbouring Chagos Archipelago is disputed not by Maldives but by two other states - Britain and Mauritius and provided that the British title to the British Indian Ocean Territory (BIOT) prevails, the equidistant boundary agreed at the technical level by the UK/Maldives

⁴⁹Note that in addition, the western terminus of the pending Japan/Russia boundary in the disputed Kurils area depends on the outcome of the pending Japan/South Korea dispute concerning sovereignty over Takeshima/Tok-do (Liancourt) Rocks. See references to Russian Federation's 2001 Submission and 2002 CLCS Recommendations *infra* notes 79-80; Japan Spurns Russian Initiative of 16 November 2004 at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4015869.stm>; Creative Thinking on the Kurils of 20 April 2005 at <http://atimes.com/atimes/Japan/GD20Dh03.html> and 12 May at www.atimes.com/atimes/Japan/GE12Dh01.html; No Peace Treaty Needed over Kurils Dispute of 2 August 2005 at <http://en.rian.ru/russia/20050802/41074254.html>; Incident of Russia's Shooting of the Japanese Crab Fishing Vessel of 17 August 2006 at <http://news.bbc.co.uk/2/hi/asia-pacific/4801175.stm>; 19 August 2006 at www.mosnews.com/news/2006/08/19/japanesereturned.shtml; Sakhalin Court's Judgment of 21 September 2006 at <http://en.rian.ru/russia/20060921/54141969.html>; Japan/Russia Kurils Negotiations of 1/5 November 2008 at <http://en.rian.ru/world/20081101/118085684.html> & <http://en.rian.ru/russia/20081105/118126214.html>; 7 August 2009 at <http://en.rian.ru/world/20090807/155756722.html>; Russia's President Medvedev Visits Kunashiri (Kurils) of 1 November 2010 at <http://en.rian.ru/world/20101108/161244572.html> & <http://www.voanews.com/english/news/Japan-Prottests-Russian-Presidents-Visit-to-Disputed-Isle-106437498.html>; Russia Wary of Japan's Kurils Visit of 17 January 2012 at http://www.upi.com/Top_News/Special/2012/01/17/Russia-wary-of-Japan-FMs-Kuril-visit/UPI-10951326799800/ and <http://en.wikipedia.org/wiki/Kunashiri>; Kurils at: <http://en.rian.ru/trend/kurilraw/>.

⁵⁰On the UNCLOS Annex VII *Barbados/Trinidad and Tobago* and *Guyana/Suriname* Arbitrations and the UN *Guyana/Venezuela* Mediation in the Caribbean region, see *supra* notes 6-7 and *infra* notes 63, 68; and remarks on Submissions of Barbados (2008) and Trinidad and Tobago (2009) to the CLCS below.

with respect to their 200-mile zones, could be formally adopted and extended over their shelves beyond 200 miles in the future.⁵¹

Submissions in Latin America and the Wider Caribbean Sea

From 1992 *Canada/France (St. Pierre & Miquelon)* Award to the 2006 UNCLOS Annex VII *Barbados/Trinidad & Tobago (Jurisdiction and Merits)* Award

1992 *Canada/France (St. Pierre & Miquelon)* Award

The UNCLOS Annex VII 2006 *Barbados/Trinidad & Tobago Maritime Delimitation (Jurisdiction and Merits)* Award is significant in the clear upholding of the Tribunal's jurisdiction over delimitation of the outer continental shelf beyond 200 miles. This is in contrast with the more hesitant approach adhered to previously by the 1992 *Canada/France (Saint Pierre et Miquelon) Maritime Delimitation* Award.

Whereas the 2006 *Barbados/Trinidad and Tobago* equitable maritime boundary delimitation *infra legem* did not ultimately involve the continental shelf beyond 200 miles, the 1992 *Canada/France (Saint Pierre et Miquelon)* Award established the precedent of restraint exercised by the Arbitral Court with respect to not prejudicing the CLCS procedure when such shelf borders on the International Seabed Area (ISA) and the Award declined to accept France's request - as opposed by Canada - to delimit the shelf areas extending south of Saint Pierre et Miquelon Islands and Newfoundland beyond 200 miles. The mushroom-shaped zone awarded to Saint Pierre et Miquelon comprises in the first sector an "asymmetric cap" of a 24-mile zone (along UNCLOS Article 33) to the west and south-west and 12-mile zone (along Article 3) to the east of Saint Pierre et Miquelon, and in the second sector - a strip 10.5-miles broad, stretching southwards of Saint Pierre et Miquelon for 200 miles and being fully "zone-locked" within Canada's (Newfoundland and Labrador) EEZ. With respect to the outer CS delimitation, the *Canada/France (Saint Pierre et Miquelon)* Arbitral Court held that:

78. Any decision by this Court recognizing or rejecting any rights of the Parties over the continental shelf beyond 200 miles, would constitute a pronouncement involving a delimitation not "between the Parties" but between each one of them and the international community, represented by organs entrusted with the administration and protection of the International Seabed Area (the seabed beyond national jurisdiction) that has been declared to be the Common Heritage of Mankind.

79. This Court is not competent to carry out a delimitation which affects the rights of a Party which is not before it. In this connection the Court notes that in accordance with Article 76(8) and Annex II of the 1982 UN Convention on the Law of the Sea, a Commission is to be set up, under title of "Commission on the Limits of the Continental Shelf", to consider the claims and data submitted by coastal States and issue recommendations to them. In conformity with this provision, only "the limits of

⁵¹On Maldives' 2010 Submission and Notes Verbales of Great Britain and Mauritius, see *infra* notes 261-263, 288-291.

the shelf established by a coastal State on the basis of these recommendations shall be final and binding".

80. Obviously, a denial of a pronouncement on the French claim, based on the absence of a competence of this Court cannot signify nor may be interpreted as prejudging, accepting or refusing the rights that may be claimed by France, or by Canada, to a continental shelf beyond 200 miles.⁵²

Although in view of the UNCLOS not having been in force at that time, French Arbitrator Prosper Weil was, in his *Canada/France* Dissenting Opinion, not convinced as to the 1992 Award's holdings concerning the ISA and CLCS, neither of which was yet established (paras 78-79 quoted above), he commended the Award (para.81) for not extending the shelf boundary line beyond 200 miles on the ground that the factual data on the seabed of this region were not sufficiently known to Canada and France to permit the application of UNCLOS Article 76, and he fully agreed with the Award (para.80 quoted above) that this conclusion did not prejudice the rights that may be claimed by either party to a broad continental shelf in the future.⁵³ However, given that 200-mile EEZ of Saint Pierre et Miquelon has been entirely contained ("zone-locked") within Canada's EEZ, the Canadian Arbitrator Allan E. Gotlieb strongly questioned, in his Dissenting Opinion, the Award's conclusion and argued that the issue of a French claim to the shelf beyond 200 miles cannot arise in the future, because:

A French claim, in these circumstances, would - miraculously - have to travel through - in some sort of dormant state - the Canadian 200 mile zone for a distance of some one hundred miles or so and then somehow revive itself so as to generate a claim to the physical shelf beyond the Canadian 200 mile zone at a distance of some 300 miles south of Saint Pierre et Miquelon.⁵⁴

⁵²1992 *Canada/France (St. Pierre et Miquelon)* Award, paras 75-82 [UNRIAA XXI, 267; (1992) 31 ILM 1197]; D.W. Bowett, "The *Canada/France (St. Pierre et Miquelon)* Arbitration," in: M. Perez Gonzalez (ed.), *Hacia un Nuevo Orden Internacional y Europeo - Estudios en Homenaje al Professor Don Manuel Diez de Velasco* (Madrid 1993) 123-136; Saint Pierre et Miquelon at http://en.wikipedia.org/wiki/Saint-Pierre_and_Miquelon; Subdivisions of France at http://en.wikipedia.org/wiki/Administrative_divisions_of_France. The complete enclosure within EEZ of Canada (Newfoundland and Labrador) of unusual "mashroom"-shaped zone awarded to Saint Pierre et Miquelon was confirmed by the 2002 *Newfoundland and Labrador/Nova Scotia (Phase II)* Award, paras 2.31, 4.27 at www.gov.ns.ca/ & www.nr.gov.nl.ca/; Press Release of 2 April 2002 at www.releases.gov.nl.ca/releases/2002/mines&en/0402n01.htm; as preceded by the 2001 *Newfoundland and Labrador/Nova Scotia (Phase I)* Award at www.gov.ns.ca/petro/documents/TribunalAwardPhaseI.pdf. The 2002 Award, paras 2.22, 2.29/34, 4.10/14 and Figure 3, paras 4.26/29, 5.18, *dispositif* paras 6.4/5 and Figure 8: Tribunal's Delimitation, extended the *Newfoundland and Labrador/Nova Scotia* boundary beyond 200 miles up to "the outer edge of the continental margin of Canada as it may be determined in accordance with international law".

⁵³1992 *Canada/France (St. Pierre et Miquelon)* Dissenting Opinion of Arbitrator Prosper Weil, para.42.

⁵⁴1992 *Canada/France (St. Pierre et Miquelon)* Dissenting Opinion of Arbitrator Allan E. Gotlieb, para.63, also stressing in para.64 that therefore the Court "should have dismissed outright all French claims to a continental shelf beyond the Canadian 200-mile limit" and that "there is no basis on which Saint Pierre et Miquelon, with a totally zone-locked maritime area, could possibly claim rights to a broad shelf beyond that area, even if the International Seabed Authority were in existence".

The possible correctness of Arbitrator Gotlieb's view seems to have been supported a decade later in the 2002 *Newfoundland and Labrador/Nova Scotia (Phase II)* Award, which reaffirmed the complete enclosure of the Saint Pierre et Miquelon's mushroom-shaped zone within the 200-mile EEZ of Canada (Newfoundland and Labrador). The 2002 Award noted that "no international court has yet had to delimit the boundary to the outer edge of the continental shelf", and that "this Tribunal does not have the competence to delimit the outer limit of the continental shelf wider than 200 miles" but that it can specify the outer shelf areas of Newfoundland and Nova Scotia *inter se* "by providing that the line shall not extend beyond the point of intersection with the outer limit of the continental margin", and it also specified that "this Tribunal will proceed on the basis that the maritime areas pertaining to France are those within the limits defined by the 1992 Award of the Court of Arbitration"; the 2002 Award then drew the *Newfoundland and Labrador/Nova Scotia* boundary line in the sector of "the outer area" beginning 11.8 miles west of the mid-point of the Scatarie Island-Lamaline Shag Rock closing line and continuing up to "the outer edge of the continental margin of Canada as it may be determined in accordance with international law" and added that: "Should the outer limit of the continental margin, as it may be determined in accordance with international law, extend beyond Point L, the course of the delimitation line beyond that Point shall be defined as a geodesic line along an azimuth of 166° 19'50" to its point of intersection with the outer limit of the continental margin so determined".⁵⁵

Notwithstanding this rather peculiar situation of the 200-mile EEZ of Saint Pierre et Miquelon being entirely "zone-locked" within the EEZ of Canada (i.e., Newfoundland and Labrador, from which any French shelf would thus have, as Allan Gotlieb put it, to "travel" through the seabed of Nova Scotia and then "revive" itself beyond Canada's 200 miles), it remains to be seen whether the assumption of the 1992 *Canada/France (St. Pierre et Miquelon)* Award quoted above that this "zone-locking" does not prejudice a future claim of France to the shelf beyond 200 miles, will materialize in a French Submission to be made to the CLCS, which Submission would then entail delimitation between that part of France's shelf and the Canadian outer continental shelf extending beyond this limit.

In the meantime, an international panel of scientists under Ron Macnab's (of Geological Survey of Canada) Chair were, in their 2003 Report, which was prepared for France (and publicized in the end of 2005), of the view that provided the political and legal difficulties involved in such unprecedented "leap-frogging" over Canada's EEZ with a view to extending the continental shelf (called by France a "discontinuous juridical shelf") of Saint Pierre et Miquelon beyond 200 miles could be overcome, the technical conditions of the seabed and the economic motivation for this extension have in any event been favourable; however, France was in early 2006 reported - in parallel to the UNCLOS Annex VII *Barbados/Trinidad & Tobago* Arbitration - to have abandoned any intention to pursue this extension due to concerns that the required "leap-frogging" could affect its friendly relations

⁵⁵2002 *Newfoundland and Labrador/Nova Scotia (Phase II)* Award, paras 2.22, 2.29/34 [reaffirming, in para.2.31, the 1992 *Canada/France (St. Pierre et Miquelon)* Award, paras 78-79], paras 4.10/14 and Figure 3: The Outer Edge of the Continental Margin off the East Coast of Canada: Projected Limits, paras 4.26/29 [reaffirming, in para.4.27, the 1992 Award, paras 75-82], 5.18, operative paras 6.4/5 and Figure 8: Tribunal's Delimitation.

with Canada.⁵⁶ When France nevertheless raised its claim in the Preliminary Partial (Saint Pierre et Miquelon) Submission to the CLCS of 8 May 2009, stating that it was without prejudice to maritime delimitation between France and Canada, this Submission was forcefully protested by Canada in its Note Verbale of 9 November 2009 as follows:

The Government of Canada rejects any claims by the French Republic to any maritime area, including any areas of continental shelf, beyond the area awarded to the French Republic by the Court of Arbitration in the *Case concerning the Delimitation of Maritime Areas between Canada and the French Republic* (10 June 1992). Consistent with the 1992 Award, the United Nations Convention on the Law of the Sea and principles of international law, a claim by the French Republic to an area of extended continental shelf off Saint Pierre and Miquelon cannot arise.⁵⁷

Canada reserved, moreover, the right to make additional comments in relation to France's Preliminary Submission quoted above or any other information, documents or submission that France may subsequently file with the UN Secretary-General in relation to Saint Pierre et Miquelon.

The 2006 UNCLOS Annex VII *Barbados/Trinidad & Tobago (Jurisdiction and Merits)* Award

The outer continental shelf beyond 200 miles was for the first time included within the scope of the dispute submitted to arbitration and falling within jurisdiction of the 5-Member Tribunal which rendered the 2006 UNCLOS Annex VII *Barbados/Trinidad &*

⁵⁶See 1992 *Canada/France (St. Pierre et Miquelon)* Award, para.80 and Dissenting Opinion of Arbitrator Weil, para.42; France's Oil and Gas Survey of 9 and 17 November 2005, referring to France's Submission to the CLCS in the context of ConocoPhillips' interest in minerals exploration on the seabed off Saint Pierre et Miquelon extending beyond 200 miles and the conclusions of the 2003 Report prepared under Dr. Ron Macnab's Chair; at www.rigzone.com/news/article.aps?a_id=26804, www.vivelecanada.ca/article.php/2005111708555716, www.cbc.ca/story/canada/national/2005/11/17/miquelon_051117.html & www.cbc.ca/nl/story/nf_stpierre_20051118.html and BBC Interviews on French Islands Bid of 6-8 March 2006, noting political reluctance of France to affect its good trade relations with Canada by claiming shelf beyond 200 miles off the Islands at http://news.bbc.co.uk/1/hi/programmes/crossing_continents/4781886.stm & http://news.bbc.co.uk/1/hi/programmes/crossing_continents/4778936.stm; and e-mail exchanges with Dr. Macnab of 1 December 2005 and 13 March 2006 (on the file with the author); Marc Plantegenest and Ron Macnab, "The French Islands of Saint Pierre et Miquelon: A Case for the Construction of a Discontinuous Juridical Continental Shelf?" at <http://www.gmat.unsw.edu.au/ablos/ABLOS03Folder/PAPER5-1.PDF>.

⁵⁷Canada's Note Verbale of 9 November 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/can_re_fra_2009_e.pdf against France's Preliminary Partial (St. Pierre et Miquelon - zone-locked in Canada Newfoundland EEZ) Submission to the CLCS, Section 4: Delimitation entre Etats of 8 May 2009 at www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/fra2009infos_preliminaires_saint_pierre_m.pdf & www.un.org/Depts/los/clcs_new/clcs_home.htm; France's Extraplac Submission to the CLCS by 2009 at www.extraplac.fr/FR/extensions/geographie.php & www.extraplac.fr/FR/extensions/StPierre.php; French Seabed Demand Triggers Diplomatic Row of 25-27 May 2009 at <http://english.people.com.cn/90001/90777/90852/6623561.html> & http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10574319 & <http://www.time.com/time/world/article/0,8599,1888462,00.html>; *supra* note 3.

Tobago Maritime Delimitation (Jurisdiction and Merits) Award. Despite the reluctance displayed in the 1992 *Canada/France (Saint Pierre et Miquelon) Maritime Delimitation Award* analyzed above,⁵⁸ the *Barbados/Trinidad & Tobago Tribunal* was now convinced that its jurisdiction over the delimitation of the outer continental shelf would not - as Trinidad and Tobago argued - interfere with the core function of the CLCS, whose practice must, in turn, in accordance with UNCLOS Article 76(10) and the CLCS Rules of Procedure (Rule 46 and Annex I), remain without prejudice to delimitation of these areas between the states concerned and resolution of the respective territorial disputes.⁵⁹ In the 2006 Award's *dispositif*, the Annex VII Tribunal held that:

- “(i) it has jurisdiction to delimit, by the drawing of a single maritime boundary, the continental shelf and EEZ appertaining to each of the Parties in the waters where their claims to these maritime zones overlap;
- (ii) its jurisdiction in that respect includes the delimitation of the maritime boundary in relation to that part of the continental shelf extending beyond 200 miles”.⁶⁰

These *Barbados/Trinidad & Tobago Tribunal*'s unanimous conclusions concerning its jurisdiction over outer CS applied to equitable maritime boundary in the Eastern sector, where the Tribunal reinforced - in accordance with international jurisprudence - the governing role of the single all-purpose equidistance principle for the equitable boundary delimiting the overlapping entitlements to the continental shelf and the EEZ, without

⁵⁸1992 *Canada/France (St. Pierre et Miquelon) Maritime Delimitation Award*, paras 75-82 [UNRIAA XXI, 267; (1992) 31 ILM 1197], noting in para.81 that the Court's decision not to prolong the single boundary beyond 200 miles and thereby to avoid encroaching upon the ISA's and CLCS's functions, was strengthened by the lack of agreement between Canada and France (also referred to in Award's paras 75-77 and Dissent of Arbitrator Prosper Weil, para.42) on whether the geomorphological data made such an extension possible; as further discussed above.

⁵⁹2006 *Barbados/Trinidad & Tobago Award* [(2006) 45 ILM 800; XXVII UNRIAA 147, http://untreaty.un.org/cod/riaa/cases/vol_XXVII/147-251.pdf, *supra* note 6], paras 63-65 and Map II, paras 80-87, quoting [para.82] the 1992 *Canada/France (St. Pierre et Miquelon) Award*, paras 75-82, and [para.86] the 2002 *Newfoundland and Labrador/Nova Scotia (Phase II) Award*, 2006 Award's Map III, paras 174-187, 189-190, 196, 213-215, 217, 367-368, *dispositif* para.384(ii); Trinidad's Counter-Memorial, paras 265-269, 287-288; Barbados' Reply, paras 125-145; Trinidad's Rejoinder, paras 157, 219; Hearings Day 1, 85-87 [Counsel Reisman, 17 October 2005], 94-95, 105 [Co-Agent Volterra]; Day 4, 77-87 [Counsel Greenwood, 21 October], 88-109 [Counsel Crawford], discussing at 99-100 and 107-108, the 2002 *Newfoundland and Labrador/Nova Scotia Award*'s boundary beyond 200 miles; Day 6, 39-49 [Reisman, 25 October]; Day 8, 32-59 [Crawford, 28 October 2005], 42-43 [Questions of President Schwebel and Arbitrator Lowe] at www.pca-cpa.org. For reaffirmation of the *Barbados/Trinidad and Tobago Award*'s approach, see *Nicaragua v. Honduras Territorial and Maritime Dispute Judgment*, ICJ Reports 2007, 759, para.319 *in fine*, quoted *supra* note 25. On importance attached by the United States to the CLCS, see *supra* note 22.

⁶⁰2006 *Barbados/Trinidad & Tobago Award*, *dispositif* para.384(ii) and illustrative Maps II-IV. The Tribunal's Members included former ICJ President Stephen M. Schwebel (President), possessing over 20 years of outstanding experience in adjudging UNCLOS related cases in the ICJ and Arbitral Tribunals, two of the leading ICJ Counsel - Sir Arthur Watts and Sir Ian Brownlie, and two other highly respected law of the sea experts - Francisco Orrego Vicuna and Vaughan A. Lowe. On the Award's use of the term "outer continental shelf", which the Arbitral Tribunal preferred over the term "extended continental shelf (ECS)" used by the parties, see 2006 Award, para.65 n.4 and Hearings Day 4, 91 [Counsel Crawford, 21 October 2005] at www.pca-cpa.org.

prejudice to the separate existence of the legal regimes of those maritime spaces.⁶¹ It is noteworthy that the 1990 Trinidad and Tobago/Venezuela Delimitation Treaty, which superseded the famous 1942 Gulf of Paria Treaty and was involved in this Eastern sector, and of which Point 22 ended the boundary some 6 miles beyond the 200-mile limit, was considered to be "the first treaty in the World where the edge of the margin was calculated on the basis of the thickness of the sedimentary rocks as equal to 1 per cent of the shortest distance from the slope, and whereby the potential extension of the boundary to a point close to the 350-mile was virtually pre-empted by the parties".⁶² Both parties to that Treaty, however, committed themselves to negotiate their respective rights up to the outer edge of the continental margin "in conformity with international law", and added that nothing in the 1990 Treaty "shall in any way prejudice or limit these rights or the rights of third parties" in the future (Article II.2). This position was reiterated in the 2002 Trinidad and Tobago's Note Verbale, which in reply to Guyana's protest against the 1990 Treaty as encroaching into Guyana's potential claims to the outer continental shelf, stated that the 1990 Treaty was concluded with Venezuela in accordance with customary international law and the UNCLOS "between two sovereign coastal States whose geographical relationship to each other is both that of oppositeness and of adjacency, and which resolved, equitably, their respective overlapping claims [...] in the Caribbean Sea, the Gulf of Paria, in the Serpent's Mouth towards the Atlantic, and in the Atlantic Ocean to a distance of 200 miles, and beyond that to the outer edge of the continental margin"; the 2002 Note Verbale also pointed out and that in the view of Trinidad and Tobago, no aspect of the 1990 Treaty line "requires review, including that part which delimits the marine and submarine areas where the two coastal States, possessing coastlines comparable in length to the coastline of Guyana, abut on the open Atlantic Ocean", while any further delimitation will be settled "by agreement on the

⁶¹2006 *Barbados/Trinidad & Tobago* Award, paras 224-227, 234, 298, emphasizing coexistence of the CS and the EEZ as separate institutions which are covered by separate UNCLOS Parts V and VI, and quoting, *inter alia*, *Libya/Malta Continental Shelf (Merits)* Judgment, ICJ Reports 1985, 33, para.33, as *reaffirmed* by *Qatar v. Bahrain Maritime Delimitation and Territorial Questions (Merits)* Judgment, ICJ Reports 2001, 110, para.226.

⁶²1990 Trinidad and Tobago/Venezuela Delimitation of Submarine Areas Treaty and 1991 Exchange of Notes, 1654 UNTS 293, 614 and attached Map, *reprinted in* J.I. Charney & L.M. Alexander eds, *International Maritime Boundaries* (Charney/ASIL IMB), Vol.I (1993), Reports Nos 2-13(1) and 2-13(3), at 639-654, 675-689 [at 675, 677 and 681] at <http://www.brill.nl/international-maritime-boundaries-3>; Nelson (2002), *supra* note 3, at 1249; Trinidad/Venezuela Resume Oil and Boundary Talks of 14 December 2005 at www.vheadline.com/readnews.asp?id=47415; Trinidad & Tobago/Venezuela Shared Gas Resources Agreement of 15 August 2010 at <http://www.dur.ac.uk/ibru/news> & <http://www.energy-pedia.com/article.aspx?articleid=141758>.

basis of international law between the relevant coastal States, as determined in accordance with the jurisprudence of the International Court of Justice and Arbitral Tribunals".⁶³

Guyana's subsequent attempt to obtain an access to then confidential pleadings in the UNCLOS Annex VII *Barbados/Trinidad and Tobago* Arbitration was rejected in 2004 pursuant to well-established practice of not allowing third-state intervention into arbitrations and the 2006 *Barbados/Trinidad and Tobago* Award dismissed Barbados' contentions on the need of taking account of the 2003 Barbados/Guyana EEZ Treaty, which established their small joint development zone (JDZ) to the south of the 1990 Treaty's boundary; the 2003 JDZ Treaty was held by the Tribunal to be *res inter alios acta* in respect of Trinidad and Tobago and as such as not having any influence on the delimitation in the present dispute, except in so far as it would reflect the limits of Barbados' maritime claim.⁶⁴ The Tribunal did, moreover, squarely rule out any effect, influence or relevance of the 1987 Dominica/France (Guadeloupe and Martinique) Delimitation Treaty, which was relied upon by Trinidad as applying in the region north of Barbados and as entailing a recognition of a departure from the equidistance in order to avoid a cut-off effect (depriving Dominica and Martinique of an outlet to the Atlantic), and which was found by the Tribunal as having no connection at all to the *Barbados/Trinidad and Tobago* dispute, direct or indirect.⁶⁵

⁶³Note Verbale of Trinidad and Tobago to Guyana of 27 March 2002, *UN Law of the Sea Bulletin* 63-65 (2002 No.48), which replied to Notes Verbales of Guyana to Trinidad and Venezuela of February 2002, *id.*, at 62, and in which Trinidad and Tobago, *id.*, at 64 also quoted ASIL/IMB Vol.I, Report No.2-13(3) on the 1990 Treaty by Venezuelan Ambassador Kaldone G. Nweihed, stating, at 676-677 at <http://www.brill.nl/international-maritime-boundaries-3> that: "It had been unofficially assumed that the main obstacles in the way of the agreement on the boundary across the open Atlantic sector were the likely contradictory claims at the trijunction where the maritime boundaries of Venezuela and Guyana would meet Trinidad and Tobago's. This situation was dealt with quite satisfactorily as the Contracting Parties applied a technical formula which shifted the boundary a few miles to the north of the point that is equidistant from the States' coastlines, thus leaving Venezuela and Guyana to decide for themselves where and when to delimit their marine and submarine areas and with regard to what baselines, taking into consideration their disagreement on a previous Venezuelan Decree. Needless to say, the recent political rapprochement between Venezuela and Guyana, which has entered a promising phase, is facilitated by this solution".

⁶⁴2006 *Barbados/Trinidad and Tobago* Award, para.10 [noting rejection of Guyana's attempt to obtain an access to then confidential pleadings], para.40, Map I, paras 103, 164, 171, Map III, 349 and para.358 at www.pca-cpa.org/.

⁶⁵2006 *Barbados/Trinidad and Tobago* Award, paras 163, 177, 180, 340, 342-344; Barbados' Reply, para.186 and Hearings Day 4, 69-71, 102-104, alleging that Dominica-proposed extension of the boundary beyond Dominica's 200 miles but into France's EEZ was opposed by then France's Legal Adviser Gilbert Guillaume (ICJ President in 2000-2003) [Counsel Crawford, 21 October 2005], Day 6, 40 [Counsel Reisman, 25 October 2005]; 1987 Dominica/France (Guadeloupe and Martinique) Delimitation Treaty, ASIL/IMB Vol.I (1993), Report No.2-15, at 705 at <http://www.brill.nl/international-maritime-boundaries-3>. See also the 1996 France (Guadeloupe)/UK (Montserrat) Maritime Delimitation Agreement, giving full effect to all islands, islets and rocks in constructing the equidistance, in ASIL/IMB Vol.III (1998), Report No.2-21, at 2227-2233 at <http://www.brill.nl/international-maritime-boundaries-0>. On undertaking in a follow-up to the 2006 Award of Barbados/France (Guadeloupe and Martinique) Delimitation Negotiations, see 18 June 2006 at www.barbadosadvocate.com/NewViewNewsleft.cfm?Record=26431; France's Partial (French Antilles - Martinique and Guadeloupe - and Kerguelens) Submission to the CLCS of 5 February 2009 at www.un.org/Depts/los/clcs_new/submissions_files/submission_fra1.htm and Extraplac at www.extraplac.fr/FR/extensions/Martinique.php & www.extraplac.fr/FR/extensions/Guadeloupe.php; Barbados/France (Guadeloupe and Martinique) Delimitation Treaty of 17 October 2009 at www.caribbeannews.com/article.php?news_id=19370; Statements by the CLCS Chairman, UN Docs CLCS/66 (30 April 2010) and CLCS/72, para.16 (16 September 2011) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; *supra* note 3; *infra* note 94.

Most importantly, while stressing that the 1990 Trinidad and Tobago/Venezuela Treaty referred to above did not "in any way prejudice or limit [...] the rights of third parties" (Article II.2), the *Barbados/Trinidad and Tobago* Tribunal unanimously rejected the "maximalist claim" of Trinidad and Tobago that was aimed at facilitating its "*salida al Atlántico*" by the use in the Eastern sector of a disputed Point A and the vector approach.⁶⁶ The Tribunal exercised its judicial discretion by adjusting the last segment of a single equidistance line to take account of the disparity in coastal lengths between the parties and it ended that boundary at the point where it intersects the boundary agreed in the 1990 Trinidad and Tobago/Venezuela Treaty.⁶⁷

Although the Tribunal considered the 1990 Treaty as "quite evidently *res inter alios acta* in respect of Barbados and every other country", it felt bound to take this Treaty into account in so far as it established the southern limit of Trinidad and Tobago entitlement to maritime areas and as it thereby partly determined the maximum extent of overlapping areas between Barbados and Trinidad and Tobago. In other words, a critical element of the single boundary line drawn by the Tribunal in the Eastern sector was the fact that by reason of its Treaty with Venezuela, Trinidad and Tobago had itself excluded the possibility that the

⁶⁶2006 *Barbados/Trinidad and Tobago* Award, paras 170-173, Map III, paras 308, 319, 322, 341, 350-360, Map VI and Hearings Day 1, 28-31, 35 [Counsel Sir Elihu Lauterpacht, 17 October 2005], Day 2, 68-70 [Counsel Paulsson, 18 October], Day 4, 74-75 [Counsel Crawford, 21 October], Day 6, 17-31 [Paulsson, 25 October], 54-57 [Sir Elihu Lauterpacht], 70 [Agent Mottley], Day 8, 79, 20-25 [Crawford, 28 October 2005]. See also equidistance boundaries anticipated by V. Prescott & C. Schofield, *The Maritime Political Boundaries* 336-338 (2005) at <http://www.brill.nl/maritime-political-boundaries-world>, concluding that: "The main effects of lines of equidistance in this area prevent Venezuela and Trinidad and Tobago claiming a full EEZ of 200 miles and from making any claim to the continental margin of the Atlantic coast beyond 200 miles".

⁶⁷*Barbados/Trinidad and Tobago* Award, paras 232, 320-321, 331-334, 369-375, referring in para.373 to the Tribunal's exercising "judicial discretion within the limits set out by the applicable law", paras 379-382, *dispositif* para.385(1), Maps V-VII and Technical Report; Hearings Day 8, 16-17 [Judge Brownlie's Question, replied by Counsel Crawford, 28 October 2005]. See also Day 7, 32 [President Schwebel's Question, 27 October 2005], replied at 32-33 [Counsel Greenwood] and in Day 8, 29-31 [Crawford] at www.pca-cpa.org/.

Tribunal draw a line extending into waters already allotted to Venezuela under that Treaty.⁶⁸ As a result of this Tribunal's appreciable compliance with the fundamental equitable principle of equidistance, supporting the view that maritime delimitation is "not a question of totally refashioning geography" ("il ne s'agit pas de refaire totalement la géographie"),⁶⁹ the single equidistant *Barbados/Trinidad and Tobago* boundary did not delimit outer continental shelf beyond 200 miles and the Tribunal did not, therefore, need to exercise its jurisdiction over such outer CS⁷⁰ and did not need to deal with the controversial (and according to Barbados, practically "unworkable") trumping of Barbados' EEZ by Trinidad and Tobago's outer

⁶⁸2006 *Barbados/Trinidad and Tobago* Award, paras 51, 164, 168, Map III, 345-348, noting [paras 345-346] in the context of a northwards - adverse to Trinidad - shift in the equidistance under that Treaty, that Barbados cannot be required to "compensate" Trinidad and Tobago for the boundary it agreed with Venezuela; paras 371, 374, 381-382 and *dispositif* para.385; *supra* notes 66-67. On that boundary appearing to be based upon assumption that disputed Esequibo land belongs to Venezuela and not to Guyana, see Guyana's 2002 protests against the 1990 Treaty, *supra* note 63; Barbados' Reply, paras 24-32, 74 n.130, para.87 n.173, Trinidad's Rejoinder, para.197 and Hearings Day 3, 103 [Counsel Crawford, 20 October 2005], Day 6, 14-15 [President Schwebel's Question, Co-Agent Volterra, 25 October], Day 7, 27 [Counsel Greenwood, 27 October], Day 8, 10, 26-27 [Crawford, 28 October 2005], 132-133 [Agent Jeremie] at www.pca-cpa.org/; 1899 *UK(Guyana)/Venezuela Boundary* Award, President Frederic Martens, No.207/Stuyt; (1949) 43 AJIL 523-530; (1950) 44 AJIL 683-693, 720-727] and J. Gillis Wetter, *The International Arbitral Process: Public and Private* (1979) 39-44, 83-109, 126-127, 145-148, 168-175; B.H. Oxman, "International Maritime Boundaries: Political, Strategic, and Historical Considerations" (1994/1995) 26 *Inter-American Law Review* 243, 266-267; UN *Guyana/Venezuela* Mediation of 29 September 2003 at www.un.org/News/briefings/docs/2003/db092903.doc.htm, 19 March 2006 at www.stabroeknews.com/index.pl/article_local_news?id=48383158; 26 January 2007 at www.un.org/apps/sg/sgstats.asp.nid=2421 & www.un.org/News/Press/docs/2007/sgsm10854.doc.htm; 31 July 2007 at http://cgxenergy.ca/News_July_31_2007.html; 17 and 25 November 2007 at <http://news.bbc.co.uk/2/hi/americas/7099476.stm> & www.stabroeknews.com/index.pl/article_general_news?id=56533840; Venezuela-Guyana-Suriname Gas Pipeline Proposal of 8 July 2008 at www.caribbeannews.com/venezuela/venezuela.php?news_id=9013 & Venezuela MFA at www.mre.gov.ve/metadot/index.pl?iid=3136&isa=Category. On potential Guyana/Suriname/Venezuela tripoint depending on the sovereignty over disputed Esequibo, see C.G. Lathrop, "Tripoint Issues in Maritime Boundary Delimitation", in ASIL/IMB Vol.V (2005) 3305, 3334 at <http://www.brill.nl/international-maritime-boundaries>; 2007 *Guyana/Suriname (Jurisdiction and Merits)* Award, *supra* note 7, paras 132, 224; Barbados/Guyana/Venezuela Notes of 2008 at <http://notesfromthemargin.wordpress.com/>; Guyana's Submission to CLCS of 6 September 2011, Section 4: Absence of Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_guy_57_2011.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm *infra* note 89; UN Guyana/Venezuela Joint Statement on Maritime Boundary Negotiations in Trinidad of 30 September 2011 at <http://jamaicagleaner.com/gleaner/20110928/business/business95.html> & <http://www.normangirvan.info/guyana-venezuela-joint-statement-on-boundaryborder-issues/>.

⁶⁹*North Sea Continental Shelf* Judgment, ICJ Reports 1969, 49-50, para.91; *as reaffirmed* by all subsequent judicial and arbitral decisions, including *Cameroon v. Nigeria; Equatorial Guinea Intervening (Merits)* Judgment, ICJ Reports 2002, 435, para.279, at 437, para.281 *in fine*, at 443-444, para.295.

⁷⁰On the *Barbados/Trinidad and Tobago* Tribunal's jurisdiction over outer CS beyond 200 miles, see *supra* notes 58-60.

continental shelf, which the use of maximalist Point A and vector approach involved.⁷¹ While stressing, in reliance on the judicial and arbitral decisions, that the test of proportionality is not a mathematical exercise that results in the attribution of maritime areas as a function of the length of the coasts of the parties or other such exact ratio calculations, the Tribunal's Members, President Stephen M. Schwebel and Arbitrators Sir Arthur Watts, Ian Brownlie, Francisco Orrego Vicuna and Vaughan A. Lowe unanimously considered that the single equidistant boundary subject to the above adjustment satisfied a broader sense of proportionality as the ultimate *a posteriori* test of the equitableness of that boundary.⁷² As the *dispositif* of the *Barbados/Trinidad and Tobago* Award expressly held in accordance with "final and binding" nature of all Judgments and Awards,⁷³ claims of the parties inconsistent with the so determined boundary will not be accepted.⁷⁴

⁷¹2006 *Barbados/Trinidad and Tobago* Award, paras 174, 178, 180-185, stressing [para.185] that: "Trinidad and Tobago's approach is a formula for inequity in this case and for chaos and conflict in any other cases in which it might be applied"; paras 367-368, stating [para.368] that "the single maritime boundary which the Tribunal has determined is such that, as between Barbados and Trinidad & Tobago, there is no single maritime boundary beyond 200 miles" and adding [para.368 *in fine*] with respect to the relationship of CS and EEZ rights in the proposed area of overlapping EEZ/Outer CS, that: "The Tribunal therefore takes no position on the substance of the problem posed by the argument advanced by Trinidad and Tobago"; Barbados Reply, paras 157-158 and Hearings Day 1, 33 [Counsel Sir Elihu Lauterpacht, 17 October 2005], Day 4, 60-61, 104 [Counsel Crawford, 21 October], 82-88 [Counsel Greenwood], Day 5, 25-26 [Co-Agent Volterra, 24 October], Day 6, 54-56, 59 [Counsel Sir Elihu Laterpacht, 25 October], Day 7, 32-33 [President Schwebel's Question, Counsel Greenwood, 27 October], 34-36 [Arbitrator Lowe's Questions, Greenwood], Day 8, 50-52 [Counsel Crawford, 28 October 2005] at www.pca-cpa.org/; as analyzed in Postscript on "Unworkable"EEZ/Outer CS Overlap found in works of Kwiatkowska (2007), quoted *supra* note 6 and updated as of 15 March 2010 at www.uu.nl/nilos/onlinepapers. On France's rejection of trumping its EEZ by outer CS of Dominica, see *supra* note 65. On EEZ/Outer CS overlaps in the *Nicaragua v. Colombia* and *Gulf of Maine* cases, see *infra* notes 76-88.

⁷²2006 *Barbados/Trinidad and Tobago* Award, paras 119-120, 158-161, 232-233, 236-240, stressing [para.240] that proportionality "serves to check the line of delimitation that might have been arrived at in consideration of various other factors, so as to ensure that the end result is equitable and thus in accordance with the applicable law under UNCLOS"; and quoting [para.237] *North Sea* Judgment, ICJ Reports 1969, 50, para.91; *Libya/Malta (Merits)* Judgment, ICJ Reports 1985, 46, para.59; *Denmark (Greenland) v. Norway (Jan Mayen)* Judgment, ICJ Reports 1993, 68, para.68; 2006 Award's paras 326-329, 335-338, 376-379, quoting [para.377] *Canada/USA Gulf of Maine* Judgment, ICJ Reports 1984, 323, para.185, and concluding [in 2006 Award's para.379] that: "The Tribunal is also satisfied that the deflection effected does not result in giving effect to the relevant coastal frontages in a manner that could itself be considered disproportionate, as would be the case if the coastal frontages in question were projected straight out to the east. The bending of the equidistance line reflects a reasonable influence of the coastal frontages on the overall area of delimitation, with a view to avoiding reciprocal encroachments which would otherwise result in some form of inequity". On 8.2:1 ratio of eastward-facing coastal frontage of Trinidad and Tobago of 74.9 miles and that of Barbados of 9.2 miles, see Award's paras 159, 326, 352 and Hearings Day 1, 30 [Counsel Sir Elihu Lauterpacht, 17 October 2005]. For reliance upon the *Barbados/Trinidad and Tobago* Award, see 2007 *Guyana/Suriname* Award, *supra* note 7, paras 220, 228, 334 and 341 at www.pca-cpa.org; *Romania v. Ukraine* Hearings, CR 2008/20, 29, para.45 [Counsel Pellet, 4 September 2008], CR 2008/28, 52, para.76 [Counsel Bundy, 11 September], CR 2008/31, 38, para.33 [Pellet, 16 September], 44-45, paras 15-17 and at 46, para.21 n.80 [Counsel Lowe, 16 September], CR 2008/32, 39, para.41 [Bundy, 18 September], CR 2008/33, 24, para.41 [Bundy, 19 September 2008] at www.icj-cij.org.

⁷³For emphasis on the "final and binding" nature of judgments and awards, see *supra* note 14.

⁷⁴2006 *Barbados/Trinidad and Tobago* Award, *dispositif* para.385(1) referring to a series of geodetic lines joining the points in the order listed as set forth in this Award, para.382, illustrative Maps V-VII and Technical Report of the Tribunal's Hydrographer, D.H. Gray attached to the Award, and *dispositif* para.385(2). As Award's para.382(3) and Technical Report specify, the geographic coordinates and azimuths of the boundary line are related to the World Geodetic System 1984 (WGS-84) geodetic datum.

While the 2006 Annex VII *Barbados/Trinidad and Tobago (Jurisdiction and Merits)* Award upheld its jurisdiction over the outer continental shelf beyond 200 miles, it did not need to apply this jurisdiction in the circumstances of equitable boundary delimitation in the Eastern sector. By contrast, the 2007 Annex VII *Guyana/Suriname (Jurisdiction and Merits)* Tribunal found it was not invited by the parties to delimit their outer continental shelves beyond 200 miles and, thus, it declined to assume jurisdiction in this respect, noting that both Guyana and Suriname reserved their rights under UNCLOS Article 76(4).⁷⁵ Although these two Awards involved distinct situations of one possessing and one not possessing jurisdiction over delimitation of the outer CS beyond 200 miles in the Caribbean Sea, the result was the same in both these Awards in that the jurisdiction was not utilized in either the *Barbados/Trinidad & Tobago* Award or in the *Guyana/Suriname* Award.

Were any of numerous pending disputes over delimitation of the outer CS beyond 200 miles to be submitted to third-party settlement in the future, it seems likely that the ICJ or Arbitral Tribunal or the ITLOS would rely upon the pioneering decision of the *Barbados/Trinidad and Tobago* Tribunal in upholding its jurisdiction. The *Barbados/Trinidad and Tobago* Award may therefore stimulate such delimitations of the outer continental shelf beyond 200 miles, and might perhaps also apply to certain portion of the Caribbean shelf involved in the pending *Nicaragua v. Colombia Territorial and Maritime Dispute (Merits)* case.⁷⁶ The same argument in support of the Court's jurisdiction over outer CS delimitation would also apply to an eventual third-party involvement in the seaward extension (beyond Point D) of the 1984 *Canada/USA Gulf of Maine* single (perpendicular) boundary discussed further below.⁷⁷ In view of the "final and binding" nature of all the Judgments and Awards,⁷⁸ it appears that in such a situation the CLCS will not make any Recommendations on such a shelf being subjected to third-party settlement, but will just take due notice of its delimitation between opposite/adjacent states, notwithstanding whether such outer continental shelf will [e.g., in the future delimitations in the Gulf of Maine, and between France (Crozet)/South Africa (Prince Edward Islands), Guyana/Suriname and Suriname/France (French Guyana), and perhaps (depending on the method used) between Barbados/Guyana] or will not [e.g., in *Nicaragua v. Colombia* case, and perhaps in the Bering and Barents Seas delimitations relevant to Russia's Submission] border on the

⁷⁵2007 *Guyana/Suriname (Jurisdiction and Merits)* Award, *supra* note 7, para.353 at www.pca-cpa.org; Guyana's and Suriname's Submissions to CLCS discussed below.

⁷⁶For Nicaragua's position (contested by Colombia) that the outer CS beyond 200 miles can overlap with 200-mile EEZ, which position was rejected by the 2006 *Barbados/Trinidad & Tobago* Arbitral Tribunal, which ironically included leading Nicaragua's Counsel Sir Ian Brownlie, *supra* notes 46 & 71, see *Nicaragua v. Colombia (Intervention)* Oral Hearings, CR 2010/14, 32, para.10 [Counsel Crawford, 13 October 2010], CR 2010/16, 15-17, paras 25-27 [Agent Arguello, 15 October 2010], CR 2010/20, 21-22, paras 27-30 [Counsel Bundy, 20 October 2010] at www.icj-cij.org.

⁷⁷*Canada/United States Delimitation of the Maritime Boundary in the Gulf of Maine Area* Judgment, ICJ Reports 1984, 253-255, para.5, at 339, para.228, Map at 346, and Technical Report at 351, para.15; as further discussed herebelow.

⁷⁸For emphasis on the "final and binding" nature of judgments and awards, see *supra* notes 73-74 and *infra* notes 96, 100-102.

International Seabed Area. In the case of the pioneering 2001 Russia's Submission,⁷⁹ the 2002 CLCS Recommendations in any event requested that CLCS be merely provided with charts and geographical coordinates of the Delimitation Agreements (upon their entry into force) with the United States and Norway for the Bering Sea and Barents Sea respectively where - as between *Colombia/Nicaragua* in the Caribbean Sea - the shelf beyond 200 miles likely does not border on the International Seabed Area; while quoting this passage of the 2002 CLCS Recommendations concerning Bering Sea and Barents Sea delimitations, the 2010 Preliminary Partial Submission of Nicaragua discussed below stated that it will consider further determination of the outer CS beyond 200 miles in the southwestern part of the

⁷⁹Russian Federation's 2001 Submission to the CLCS covering four regions of the Central Arctic Ocean, Bering Sea, Barents Sea and the Sea of Okhotsk, Note Verbale of Japan on the Sea of Okhotsk region of 14 March 2002 [UN Doc. SPLOS/82 (2002)], Notes Verbales of Canada and Denmark of 26 February 2002 and the United States of 18 March 2002 on the Central Arctic Ocean, and Note Verbale of Norway of 2 April 2002 on the Barents Sea and Central Arctic Ocean regions; Russia's Statement in Response, UN Doc. CLCS/31 (2002); UN Doc. CLCS/34 (2002) at www.un.org/Depts/los/clcs_new/submissions_files/submission_rus.htm; CLCS Recommendations on Russia's Submission, summarized in *UN Secretary-General Oceans Report*, UN Doc. A/57/57/Add.1, paras 27-41 (2002) at www.un.org/Depts/los/; *Report of the 13th UNCLOS States Parties, New York, 9-13 June 2003*, para 83, UN Doc. SPLOS/103 (2003); Russia's Note Verbale of 21 February 2007 on Norway's 2006 Submission at www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; Russia's Oil & Gas Maps at www.rigzone.com/news/image_results.asp?ctry_id=173; *supra* note 3. On Japan/Russia territorial dispute over Northern Territories/Southern Kurils, see *supra* note 49.

Caribbean Sea after the ICJ has rendered its *Nicaragua v. Colombia (Merits)* Judgment in the future.⁸⁰

As was noted above, were Canada (whose CLCS deadline is in November 2013) and the United States⁸¹ to seek an eventual third-party involvement in the seaward extension (beyond Point D) of the 1984 *Canada/USA Gulf of Maine* single (perpendicular) boundary, the Court would most likely follow the precedent of the 2006 UNCLOS Annex VII *Barbados/Trinidad & Tobago (Jurisdiction and Merits)* Award and it would uphold jurisdiction over such outer CS delimitation. As it was recalled during *Barbados/Trinidad & Tobago* proceedings headed by President Stephen M. Schwebel, who also was the *Gulf of Maine* Member, the boundary line determined by the ICJ *Gulf of Maine* Chamber stopped - with the agreement of both parties - at a point on the U.S. 200-mile limit; a point that is only about 176 miles from Canada's baselines, beyond which lies a potential gray area in which the Canadian EEZ and the U.S. outer continental shelf overlap, followed by an area of outer

⁸⁰See *id.*; and 1990 Russia/USA Bering Sea and Arctic Maritime Boundary Agreement, in: (1990) 29 ILM 941; A. Oude Elferink, "Arctic Maritime Delimitations", in: A. Oude Elferink & D.R. Rothwell (eds.), *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction* (2001) 179, 182-183; "U.S. Reaction to Russian Continental Shelf Claim" (2002) 96 AJIL 969-970; (2003) 97 AJIL 91, 97-99, including Map; Oude Elferink, "Submissions of Coastal States to the CLCS" (2004), *supra* note 3, at 270-274; Rothwell, "Issues and Strategies" (2008), *supra* note 3, at 200-202; E. Riddell-Dixon, "Canada and Arctic Politics: The Continental Shelf Extension" (2008) 39 *Ocean Development & International Law* (ODIL) 343-359; 2009 U.S. Presidential Arctic Directive, *supra* note 5, Section III.D; and Nicaragua's 2010 Preliminary Partial Submission, paras 24-27, quoting [para.26] the 2002 CLCS Recommendations on Bering and Barents Seas under Russia's Submission, UN Doc.A/57/57/Add.1, paras 38-41, esp. para.39 (8 October 2002) at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/nic_preliminaryinformation2010.pdf; Arctic Boundary Disputes of 6 July 2011 at <http://www.guardian.co.uk/world/2011/jul/06/arctic-resources-territorial-dispute?intcmp=239> & <http://www.guardian.co.uk/world/2011/jul/06/us-russia-political-tensions-arctic>; *infra* notes 102 & 105. On provisional application of the 1990 Russia/USA Bering Sea and Arctic Maritime Boundary Agreement, see each of the three *Yukos and GML et al. v. Russian Federation (Jurisdiction)* Awards of 30 November 2009, para.184 [Respondent's Witness M. Nordquist] and para.202 [Claimant's Witness V. Gladyshev] at www.encharter.org/index.php?id=213. On Barents Sea, see Norway, Russia Agree on New Barents Sea Boundary of 27 April 2010 at www.nytimes.com/2010/04/28/world/europe/28norway.html, www.kyivpost.com/news/russia/detail/65178/ & <http://news.bbc.co.uk/2/hi/europe/8646644.stm>; Norway/Russian Federation Treaty on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean of 15 September 2010, in: (2011) 26 IJMCL 151-168 at <http://brill.nl/estu>; Norway/Russia Sign Barents Sea Delimitation Agreement of 15 September 2010 [in force: 7 June 2011] at http://www.regjeringen.no/upload/SMK/Vedlegg/2010/avtale_engelsk.pdf & <http://www.bbc.co.uk/news/business-11316430>, <http://en.rian.ru/russia/20100915/160600591.html> and Map at <http://en.rian.ru/infographics/20100916/160612791.html>, <http://www.canada.com/news/Norway+Russia+reach+deal+turn+down+heat+Arctic+claims/3530569/story.html>, <http://www.guardian.co.uk/world/2010/sep/15/russia-norway-arctic-border-dispute> & http://www.dur.ac.uk/ibru/news/boundary_news/?itemno=10741&rehref=%2Fibru%2Fnews%2F&resubj=Boundary+news%20Headlines;Barents+Sea+Treaty+of+15+September+2010+Enters+Into+Force+on+7+June+2011 at <http://www.presstv.ir/detail/183697.html>, <http://www.norwaypost.no/news/norway-and-russia-ratify-treaty-on-maritime-delimitation-25309.html>, <http://www.bbc.co.uk/news/business-13686049>, http://www.noorwegen.nl/News_and_events/Nieuws/Press-Release-Norway-and-Russia-ratify-treaty-on-maritime-delimitation-/, <http://www.asil.org/ilib110610.cfm>, <http://barentsobserver.com/the-new-norwegian-russian-border.4930280-116320.html> & <http://www.oilandgaseurasia.com/news/p/0/news/11619>. See also remarks below on using by the 2009 CLCS Recommendations on Mexico's 2007 Partial (Western Gulf of Mexico) Submission of coordinates of the 2000 Mexico/USA Treaty.

⁸¹See *supra* note 22.

continental shelf belonging to both states, both of which extend for a considerable distance beyond 200 miles.⁸²

In the circumstances prevailing in the *Barbados/Trinidad & Tobago* delimitation, the Arbitral Tribunal was bound to reject the maximalist claim of Trinidad & Tobago to its “*salida al Atlantico*” and to a (practically unworkable) trumping of the EEZ of Barbados by the outer CS of Trinidad & Tobago extending beyond 200 miles. It now appears that similar claims, even if they were advanced in different geographical contexts, would be unlikely to be accepted by the ICJ [e.g., in the *Nicaragua v. Colombia (Merits)* Judgment], ITLOS or another Arbitral Tribunal, unless they were based upon a *bona fide* joint - unlikely in practice - request from both parties to a particular dispute.⁸³ Were such exceptional agreement be lacking, the establishment of any area of overlapping EEZ/Outer CS, which would involve a great multiplicity of intertwined rights and jurisdiction of two coastal states, and which would also have to be duly coordinated with the high seas *jus communicationis* exercised within this area by all other states by virtue of Articles 58 and 78, could - as Barbados correctly maintained - be viewed as “a formula for chaos and conflict”.⁸⁴ An Award which endorsed such a solution - in its maximalist form claimed by Trinidad and Tobago or in any lesser form of a narrower corridor - would, in effect, amount to dispute stimulation rather than dispute resolution, and would be particularly unwarrantable in such strategically important region as is the Caribbean Sea.

⁸²*Canada/United States Delimitation of the Maritime Boundary in the Gulf of Maine Area* Judgment, ICJ Reports 1984, 253-255, para.5, at 339, para.228, Map at 346, and Technical Report at 351, para.15; as analyzed by D.R. Robinson, D.A. Colson & B.C. Rashkow, “The *Gulf of Maine* Case” (1985) 79 AJIL 578, 585; D.A. Colson, “The Delimitation of the Outer Continental Shelf Between Neighbouring States” (2003) 97 AJIL 91, 104-105; and as relied upon by Trinidad and Tobago, in *Barbados/Trinidad & Tobago* Hearings, Day 4, 99 [Counsel Crawford, 21 October 2005], Day 8, 40 [Crawford, 28 October 2005], making an allusion to *Barbados/Trinidad & Tobago* President Schwebel’s membership in the *Gulf of Maine* Chamber and remarking: “It would come as a slight surprise if there needs to be another arbitration in the Gulf of Maine, but no doubt, Mr President, you will enjoy sitting on it”. On no progress made until today in addressing the *Gulf of Maine* boundary landward of its Point A due to the continuing Canada/United States sovereignty dispute over Machias Seal Island and North Rock, see *Gulf of Maine* Judgment, ICJ Reports 1984, 265-266, para.20, at 332-333, paras 210-213; D.A. Colson and R.W. Smith, “North American Maritime Boundaries,” in *International Maritime Boundaries* (ASIL/IMB) Vol.V (2005) 3401, 3402 at <http://www.brill.nl/international-maritime-boundaries>; T. McDorman, *International Ocean Law* (2005) 91-93; Machias Seal Island Dispute at www.siue.edu/GEOGRAPHY/ONLINE/Schmidt.htm & www.wikinfo.org/wiki.php?title=Machias_Seal_Island. On the “likely” U.S. Outer CS(ECS) off the Atlantic Coast, see U.S. EEZ and Extended Continental Shelf of 7 June 2011, pp.5-6 at <http://www.heritage.org/research/reports/2011/06/un-convention-on-the-law-of-the-sea-erodes-us-sovereignty-over-us-extended-continental-shelf>, <http://continentalshelf.gov/>, *infra* note 214.

⁸³A prime example of this kind of solution that resulted from direct negotiations between parties is the 1978 Australia/Papua New Guinea Torres Strait (Joint Protected Zone) Treaty, (1979) 18 ILM 291, as referred to by the 2006 *Barbados/Trinidad & Tobago* Award, paras 177, 235; Trinidad’s Counter-Memorial, para.380; Barbados’ Reply, para.164; Trinidad’s Rejoinder, para.137; Hearings Day-4, 104-105 [Counsel Crawford, 21 October 2005] at www.pca-cpa.org; *Nicaragua v. Honduras* Hearings, CR 2007/14, 23, para.51, at 24, para.54 [Counsel Colson, 23 March 2007] at www.icj-cij.org; *Nicaragua v. Colombia* Nicaragua’s Memorial, 244; *Nicaragua v. Colombia (Costa Rica & Honduras Interventions)* Hearings, CR 2010/14, 32, para.10 [Counsel Crawford, 13 October 2010], CR 2010/16, 15-17, paras 25-27 [Agent Arguello, 15 October 2010], CR 2010/20, 21-22, paras 27-30 [Counsel Bundy, 20 October 2010] at www.icj-cij.org. On unsuccessful attempts of Australia and Papua New Guinea in the IMO to establish compulsory pilotage for the Torres Strait, see B. Sage, “Precautionary Coastal States’ Jurisdiction” (2006) 37 ODIL 359, 365.

⁸⁴2006 *Barbados/Trinidad and Tobago* Award, para.185, stressing that: “Trinidad and Tobago’s approach is thus a formula for inequity in this case and for chaos and conflict in any other cases in which it might be applied” at www.pca-cpa.org, as quoted *supra* note 71.

Similarly, it would appear preferable to avoid the situation of "gray" zone of overlapping EEZ/Outer CS (of less than about 100 square miles) of Canada and the United States in the Gulf of Maine⁸⁵ and instead, to fix - by means of bilateral negotiations or any future third-party settlement⁸⁶ - their single boundary beyond the 1984 *Gulf of Maine* Judgment's Point D:

* in the way which would either extend Canada's EEZ to the exclusion of the potential U.S. outer continental shelf, or would extend such U.S. shelf (or grant the United States an additional EEZ area) to the exclusion of the potential Canada's EEZ; in each of these cases, the boundary could be somewhat shifted in favour of this state, whose maritime area was excluded and in the case of resolution by bilateral negotiations (any judicial or arbitral forum could not engage in this kind of trade-offs), such exclusion could perhaps be balanced by awarding the sovereignty over disputed Machias Seal Island and North Rock to that state (e.g., Canada's sovereignty over these islets could be agreed jointly with extension of the U.S. outer continental shelf throughout the whole gray area),

* or less preferably - in the way which would reinforce Canada's reduced EEZ, but would establish the joint outer continental shelf of both states within the gray area.⁸⁷

However this is done, whether by bilateral negotiations or third-party settlement, the determination of Canada/U.S. boundary beyond Point D could perhaps in any event be coupled with resolution of the Machias Seal dispute and the ensuing completion of their single boundary landward of Point A which the ICJ Chamber left undefined.⁸⁸

⁸⁵On well advanced Canada/U.S. cooperation in the Gulf of Maine, see *UN Secretary-General Oceans Report*, UN Doc. A/53/456, para.263 (1998) at www.un.org/Depts/los; Canada/US Boundary Commission at www.internationalboundarycommission.org; and on the Northeast Consortium - U.S. Congressional policy response (since 1999) in the Gulf of Maine and Georges Bank fisheries, see T.W. Hartley & R.A. Robertson, "The Case of Northeast Consortium" (2006) 30 *Marine Policy* 580-592 at www.elsevier.com/locate/marpol; U.S. Considers Seismic Testing in Atlantic for the First Time in 30 Years of 28 January 2010 at www.cbc.ca/canada/nova-scotia/story/2010/01/28/ns-georges-bank-seismic.html; Gulf of Maine Action Plan 2007-2012 at www.gulfofmaine.org/actionplan.

⁸⁶If a non-party (such as in this case the United States) could be considered as falling within the ambit of "entities other than States Parties" in the meaning of Article 13 of the UNCLOS Annex VII, the new *Gulf of Maine* case could be brought to an Annex VII Arbitral Tribunal. On the prospective U.S. choice of Annex VII Arbitration under UNCLOS Article 287 and the ASIL Roundtable Discussion: Should the United States Join the Convention?, chaired by Former ICJ President Stephen M. Schwebel at Symposium in Remembrance of Louis B. Sohn on 24 October 2006 at www.asil.org/pdfs/sohnprogram1.pdf, of which proceedings were published by (2007 No.3) 39 *George Washington International Law Review*, see *supra* note 5.

⁸⁷The precedent of granting the United States of an additional EEZ area in the Bering Sea was established by sofar unratified 1990 Russian Federation/USA Bering Sea and Arctic Maritime Boundary Agreement, 29 ILM 941 (1990), followed by granting Russia of an additional EEZ rights and jurisdiction in the Special Area beyond Russia's EEZ (without any formal extension of Russia's EEZ) under Article 3 of Norway/Russian Federation Treaty on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean of 15 September 2010, (2011) 26 IJMCL 151-168 at <http://brill.nl/estu>, *supra* notes 79-80 and *infra* note 105.

⁸⁸See *supra* note 82.

The Ensuing Submissions to the CLCS

Guyana, French Guyana, Suriname, Barbados, Trinidad & Tobago, French Antilles (Martinique & Guadeloupe)

In a follow-up to the 2007 UNCLOS Annex VII *Guyana/Suriname* Award referred to above, Guyana on 12 May 2009 filed its Preliminary Submission with the CLCS, where it stated that there were no disputes relevant to Guyana's Submission, which was made without prejudice to the future delimitations of the outer CS beyond 200 miles pursuant to UNCLOS Article 76(10), and that negotiations among the regional states involved in such delimitations were expected to take place soon, and on 6 September 2011 Guyana filed its actual Submission.⁸⁹ In reply to France's 2007 Partial (New Caledonia and French Guyana) Submission, which declared absence of any disputes on the outer continental shelf in the area of French Guyana (located between Brazil and Suriname), Suriname stated in its Note Verbale of 17 August 2007 that France's Submission concerning French Guyana and the CLCS Recommendation, which followed on 2 September 2009, will remain without prejudice to the future Suriname's Submission and France (French Guyana)/Suriname delimitation.⁹⁰

Absence of any disputes over outer CS beyond 200 miles was also declared in Suriname's own 2008 Submission, which was more elaborated in this respect than France's 2007 Partial (New Caledonia and French Guyana) Submission and Guyana's 2009 Preliminary Submission. Whereas Suriname's outer CS was not the subject of any dispute, Suriname's Submission stated that it and the CLCS Recommendations will remain, under UNCLOS Article 76(10) and Article 9 of Annex II quoted before, without prejudice to the maritime boundary delimitations. This was confirmed during consultations held by Suriname with France (French Guyana), Barbados, Guyana, Trinidad and Tobago and Venezuela, whose governments have each agreed not to object to the consideration by the CLCS of the

⁸⁹Guyana's 2009 Preliminary Submission, Section 4: Absence of Disputes, CLCS at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/guy2009preliminaryinformation.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; and Guyana's Submission of 6 September 2011, Section 4: Absence of Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_guy_57_2011.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3. On UN *Guyana/Venezuela* Mediation, see *supra* note 68.

⁹⁰On extension by France of its outer CS beyond 200 miles and delimitation with Suriname, see Thomas W. Donovan, *French Guyana/Suriname: The Maourini River Tract and Its Colonial Legacy in South America* (Spring 2004) at <http://www.kentlaw.edu/jicl/articles/spring2004/Marouini%20River%20-%20Thomas%20Donovan.doc>; Suriname Staatsolie's 2006 Bidding Round involving oil blocks bordering with French Guyana's EEZ at www.staatsolie.com/2005/pdf/PetroleumBiddingRound2006.pdf & www.staatsolie.com/2005/; France's 2007 Partial (New Caledonia and French Guyana) Submission, Section 4: Absence of Disputes, Suriname's 2007 Note Verbale and the 2009 CLCS Recommendations, Sections I.4 & III.A: French Guyana, 2: Notes Verbales of Other States (Suriname) at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_fra.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm, www.un.org/Depts/los/clcs_new/clcs_home.htm; France's Extraplac Submission to the CLCS by 2009 at www.extraplac.fr/FR/extensions/Guyane.php and *supra* note 3. On Brazil/France (French Guyana) delimitation, see remarks on Brazil's 2004 Submission to the CLCS *infra*.

Submission of Suriname.⁹¹ The 2009 Note Verbale of Barbados stressed that pursuant to UNCLOS Article 76 and Annex II (Article 9) as well as the CLCS Rules of Procedure (Rule 46 and Annex I), Suriname's Submission and CLCS Recommendations will remain without prejudice to Barbados' 2008 Submission and the future Barbados/Suriname maritime boundary delimitation.⁹² These actions illustrate that, as was noted above, the fundamental principles of not prejudicing boundary delimitations under all the UNCLOS "savings provisions" apply to both disputed and non-disputed pending delimitations and to other unresolved land or maritime disputes.

In a follow-up to the 2006 UNCLOS Annex VII *Barbados/Trinidad and Tobago* Award, Barbados made its Submission to the CLCS on 8 May 2008 and like other Caribbean Submissions referred to earlier, it expressly noted the absence of disputes and the fact that Suriname, Guyana and France (French Antilles) had agreed not to object to the consideration by the CLCS of Barbados' Submission and that the 2006 Annex VII Award "determined the areas of maritime entitlement as between Barbados and Trinidad and Tobago".⁹³ France's Partial (French Antilles - Martinique and Guadeloupe - and Kerguelens) Submission to the CLCS of 5 February 2009 also declared absence of disputes and specified that by mutual agreement, the overlapping outer continental shelves of Martinique and Guadeloupe and Barbados, which then still awaited delimitation, as subsequently effected by Barbados/France (Martinique and Guadeloupe) Delimitation Agreement of 17 October 2009, should not

⁹¹On preparation of Suriname's Submission to the CLCS, involving future Suriname/Guyana and Suriname/French Guyana (and several other) shelf delimitations beyond 200 miles, see Suriname Expansionist Boundary Drive (in Dutch), *De Ware Tijd* (DWT) of 11 March 2006, noting designation of US \$ 1,5 million for research in the next 3 years, at www.dwtonline.com/website/nieuws.asp?menuid=37&id=16282 & 19 March 2006 at www.stabroeknews.com/index.pl/article_local_news?id=48383158; Suriname's 2008 Submission, Section 4: Absence of Disputes, Notes Verbales of France (French Guyana) of 22 December 2008, Trinidad & Tobago of 29 April 2009 and Barbados of 31 July 2009 at CLCS at www.un.org/Depts/los/clcs_new/submissions_files/submission_sur.htm; Statement by the CLCS Chairman, UN Doc. CLCS/68 (17 September 2010); CLCS Recommendations of 30 March 2011 and Statement by the CLCS Chairman, UN Doc. CLCS/70 (11 May 2011) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; *supra* note 3.

⁹²*Id.*

⁹³Barbados' 2008 Submission, Section 1.4: Absence of Disputes at CLCS, Notes Verbales of Suriname of 7 August 2008, Trinidad & Tobago of 11 August 2008 and Venezuela of 17 September 2008 at www.un.org/Depts/los/clcs_new/submissions_files/submission_brb.htm, www.un.org/Depts/los/clcs_new/commission_submissions.htm; *supra* note 3; 22nd CLCS Session, 18 August-12 September 2008, *Press Release SEA/1908* of 12 September 2008 at www.un.org/News/Press/docs//2008/sea1908.doc.htm; Barbados Co-Agent R. Volterra, "The 2006 Award and International Law" at www.energy.gov.bb; Barbados/Guyana/Venezuela Notes at <http://notesfromthemargin.wordpress.com/>; Statement by the CLCS Chairman, UN Doc. CLCS/64 (1 October 2009) and the CLCS Recommendations of 15 April 2010 on the 2008 Barbados Submission, *supra*; Statements by the CLCS Chairman, UN Docs CLCS/66 (30 April 2010), CLCS/70, paras 68-70 (11 May 2011) and CLCS/72, paras 49-52 (16 September 2011); Barbados' Revised (Gardiner Point 12-GP12) Submission of 25 July 2011 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_brb_10rev2011.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm, www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/. On preparation by Barbados since the mid-1990s of its Submission to the CLCS concerning the limits of its outer continental shelf beyond 200 miles, see 2006 *Barbados/Trinidad & Tobago* Award's Map II, paras 103, 157 and Hearings Day 1, 94-95, 105 [Co-Agent Volterra, 17 October 2005], Day 5, 27-29 [Volterra, 24 October 2005] at www.pca-cpa.org/ and Kwiatkowska, *Decisions of the World Court* (2010), *supra* note 1, at 68.

prevent the CLCS from examining the Submissions of both France (2009) and Barbados (2008).⁹⁴

The 2008 Suriname's Note Verbale on Barbados' Submission was similarly neutral as the subsequent 2009 Barbados' Note Verbale on Suriname's Submission referred to above.

The 2008 Venezuela's Note Verbale on Barbados' Submission stressed Venezuela's customary law exclusive rights over the outer CS as a non-party to the UNCLOS and the fact that contrary to the CLCS Rules of Procedure, Barbados did not confer with Venezuela on Barbadian Submission; Venezuela reserved "all of its rights pursuant to international law, including the right to make future objections and comments regarding the Submission of Barbados". This Venezuela's position was supportive of the preceding 2008 Note Verbale of Trinidad & Tobago on Barbados' Submission which - like Venezuela did - complained about not having been consulted by Barbados and which strongly objected to otherwise perfectly correct conclusion of the 2008 Barbados' Submission that the 2006 UNCLOS Annex VII *Barbados/Trinidad & Tobago Award* "determined the areas of maritime entitlement as between Barbados and Trinidad and Tobago".⁹⁵ This Trinidad & Tobago's objection not only was inconsistent with the "final and binding" nature of all judicial/arbitral settlements,⁹⁶ but it also ran counter to a critical element of the single boundary drawn by the 2006 *Barbados/Trinidad & Tobago Tribunal*; in particular, as was analyzed earlier, by reason of its 1990 Treaty with Venezuela, Trinidad and Tobago had itself excluded the possibility that the Tribunal draw a line extending into waters already allotted to Venezuela under that Treaty and the Tribunal's single line could not, therefore, delimit outer CS beyond 200 miles, which Trinidad & Tobago could thus not possess.⁹⁷

Nevertheless, in a surprising disregard and *quid pro quo* misinterpretation of the "final and binding" 2006 UNCLOS Annex VII *Barbados/Trinidad & Tobago Award*, Trinidad and Tobago filed one year after Barbados' 2008 Submission its own 2009 Submission to the CLCS, where Trinidad & Tobago asserted under "Absence of Disputes" that it obtained consent of Guyana, Suriname and Venezuela and that it has been negotiating with France with respect to overlapping entitlements to the outer CS beyond 200 miles.⁹⁸ Trinidad & Tobago's Submission - which was misadvised by its native and CLCS Member Mr. Francis Charles - continued in an entirely misplaced spirit that: "this Submission covers maritime space over which the Arbitral Tribunal in its 2006 *Barbados/Trinidad & Tobago Award* exercised no jurisdiction and accordingly made no award, as well as maritime space over which Barbados maintains no claim".⁹⁹ At the same time, in its

⁹⁴For France's 2009 Partial (Antilles - Guadeloupe & Martinique - and Kerguelens) Submission, Section 4: Absence of Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_fra1.htm, the 1987 Dominica/France (Guadeloupe & Martinique) Delimitation Treaty, the 1996 France (Guadeloupe)/UK (Montserrat) Delimitation Treaty, and the 2009 Barbados/France (Guadeloupe & Martinique) Delimitation Treaty, see *supra* note 65.

⁹⁵Barbados' 2008 Submission to CLCS, Section 1.4: Absence of Disputes, *supra* note 93.

⁹⁶See *supra* note 78.

⁹⁷See *supra* notes 66-74.

⁹⁸On preparation of Trinidad and Tobago's Submission to the CLCS, see *Barbados/Trinidad & Tobago Oral Hearings*, Day-4, 89-90 [Counsel Crawford, 21 Oct], Day-5, 28-31 [Co-Agent Volterra, 24 Oct], Day-7, 38-40 [Counsel Greenwood, 27 Oct 2005], 82 [Wordsworth] at www.pca-cpa.org; Trinidad & Tobago's 2009 Submission, Section 11: Settled Maritime Boundaries with Venezuela and Barbados; Section 12: Absence of Disputes, and Note Verbale of Suriname of 9 July 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_tto_49_2009.htm, www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/; *supra* note 3.

⁹⁹ *Id.*, Trinidad & Tobago's 2009 Submission, Section 12: Absence of Disputes.

Recommendations of 15 April 2010 on the 2008 Barbados' Submission, the CLCS - which included a member from Trinidad & Tobago, but not from Barbados and could therefore be biased - drew the whole Section IV: Notes Verbales Submitted by Other States, in which the CLCS recited Trinidad & Tobago's and Venezuela's Notes Verbales of 11 August 2008 and 17 September 2008 on the Barbados' Submission and reiterated that the CLCS Recommendations "only deal with the outer limits of the continental shelf of Barbados and shall not prejudice any bilateral delimitation issues between States".¹⁰⁰ It seems striking that the CLCS Recommendations took no notice of the legitimate position expressed in Barbados' 2008 Submission that the unquestionably "final and binding" 2006 *Barbados/Trinidad & Tobago (Jurisdiction and Merits)* Award "determined the areas of maritime entitlement as between Barbados and Trinidad and Tobago".¹⁰¹ If in its 2002 Recommendations on Russia's Submission, the CLCS requested Russia to provide it with charts and geographical coordinates of the Delimitation Agreements (upon their entry into force) with the United States and Norway for the Bering and Barents Seas respectively, and if in its 2009 Recommendations on Mexico's 2007 Partial (Western Gulf of Mexico) Submission, the CLCS endorsed all coordinates of the turning points defined in the 2000 Mexico/USA Treaty on the Delimitation of the Continental Shelf in the Western Gulf of Mexico Beyond 200 Miles, it is extremely puzzling why the CLCS did not likewise accept the charts and coordinates of the "final and binding" maritime boundary drawn under the 2006 UNCLOS Annex VII *Barbados/Trinidad & Tobago (Jurisdiction and Merits)* Award?¹⁰²

Costa Rica, Nicaragua, Honduras, Cuba

From the states involved in the then pending and parallel ICJ *Nicaragua v. Colombia Territorial and Maritime Dispute (Costa Rica's and Honduras' Applications to Intervene)* proceedings, Costa Rica (on 11 May 2009) and Nicaragua (on 7 April 2010, shortly prior to its May 2010 deadline) filed only Preliminary Submissions, while Honduras has to file its Submission only by February 2012.¹⁰³ Costa Rica's Preliminary Submission to the CLCS of 11 May 2009 preceded its Application to Intervene into *Nicaragua v. Colombia* case of 25 February 2010 and the former generally announced that: "All information and maps contained in this communication are without prejudice to issues of maritime delimitation. [...] Unresolved questions remain in relation to bilateral delimitation of the continental shelf with neighbouring States. Such questions will have to be considered by reference to Rule 46

¹⁰⁰CLCS Recommendations of 15 April 2010 on the 2008 Barbados' Submission, Section IV: Notes Verbales Submitted by Other States, paras 6 & 9 at www.un.org/Depts/los/clcs_new/submissions_files/submission_brb.htm, www.un.org/Depts/los/clcs_new/commission_submissions.htm *supra*.

¹⁰¹See *supra* notes 66-72. On the "final and binding" nature of judgments and awards, see *supra* notes 14, 73-74 and 78. For surprise over Trinidad & Tobago's Submission, see also R. Meese, "Bilan d'étape au 12 mai 2009 des demandes d'extension du plateau continental à la CLCS", in: *Les implications juridiques de la ratification de la Convention des Nations Unies sur le droit de la mer* (Université Mohammed V-Souissi 2010) 247, 279-280.

¹⁰²For reliance on the 2002 CLCS Recommendations on Russia's Submission in the 2010 Preliminary Partial Submission of Nicaragua in the context of the future *Nicaragua v. Colombia Territorial and Maritime Dispute; Costa Rica and Honduras Intervening (Merits)* Judgment, see remarks below.

¹⁰³On *Nicaragua v. Colombia Territorial and Maritime Dispute (Merits)* case, see *supra* notes 46 & 76. On Preliminary Submissions being sufficient for satisfying the CLCS deadline, see *supra* note 4.

and Annex I of the CLCS Rules of Procedure”; Nicaragua’s Note Verbale of 7 April 2010 expressed its reservations to this entire Costa Rica’s document.¹⁰⁴

Nicaragua’s own Preliminary Partial Submission of 7 April 2010 stated that it will consider further determination of the outer CS beyond 200 miles in the southwestern part of the Caribbean Sea after the ICJ has rendered in the future its *Nicaragua v. Colombia Territorial and Maritime Dispute (Merits)* Judgment, of which charts and coordinates of the delimitation lines as representing the outer CS limits of Nicaragua will be transmitted to the CLCS.¹⁰⁵ Similarly like Nicaragua’s Note Verbale did in regard of Costa Rica’s 2009 Preliminary Submission referred to above, Costa Rica’s Note Verbale of 19 August 2010 now expressed reservations concerning the entire Nicaragua’s Preliminary Partial Submission which included marine areas not yet delimited by any Costa Rica/Nicaragua treaty.¹⁰⁶

Whereas Cuba’s both Preliminary Partial (12 May 2009) and actual Partial (1 June 2009) Submissions concern Eastern Gulf of Mexico referred to further below, Cuba is also involved into prospective boundary between Cuba, Haiti, Jamaica and the uninhabited U.S. Navassa Island (also claimed by Haiti since its independence from France in 1804), mostly exposed rock (composed of raised coral and limestone plateau) of some 2 square miles and 15 meters high, which lies about 100 miles south of the U.S. naval base at Guantanamo Bay, Cuba, 30 miles west of Cape Tiburon, Haiti, at the south-west entrance to the Windward Passage, east of Kingston, Jamaica; Navassa Island supported guano-harvesting in the past (1856-1898, when it housed 140 African-American contract workers) and had the U.S. lighthouse (constructed in 1917 after the opening of the Panama Canal in 1914, but dismantled by the U.S. Coast Guard in 1996), and it was accorded "country"

¹⁰⁴Costa Rica’s 2009 Preliminary Submission, Section 7: Maritime Delimitation and Other Issues and Nicaragua’s Note Verbale of 7 April 2010 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cri2009informacion_preliminar.pdf, http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/nic_re_cri_2010_s.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm, www.un.org/Depts/los/clcs_new/clcs_home.htm and *supra* note 3.

¹⁰⁵Nicaragua’s 2010 Preliminary Partial Submission, paras 24-27, quoting [para.26] the 2002 CLCS Recommendations on the pioneering Russia’s 2001 Submission that: “In the case of the Barents and Bering seas, the CLCS recommended to the Russian Federation, upon entry into force of the maritime boundary delimitation agreements with Norway in the Barents Sea, and with the United States of America in the Bering Sea, to transmit to the Commission the charts and coordinates of the delimitation lines as they would represent the outer limits of the continental shelf of the Russian Federation extending beyond 200 nautical miles in the Barents Sea and the Bering Sea respectively.”, UN Doc.A/57/57/Add.1, paras 38-41, esp. para.39 (8 October 2002), *supra* notes 79-80, 87; Russia’s Note Verbale of 21 February 2007 on Norway’s 2006 Submission at www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm; and Costa Rica’s Note Verbale of 19 August 2010 on Nicaragua’s Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/nic_preliminaryinformation2010.pdf, http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cri_re_nic_2010en.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm, www.un.org/Depts/los/clcs_new/clcs_home.htm and *supra* note 3. On the same effect [as that of Nicaragua’s 2010 Preliminary Partial Submission] of Peru’s 2010 Note Verbale on Chile’s 2009 Preliminary Submission in the context of the ICJ *Peru v. Chile Maritime Delimitation* case at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/per_re_chl_2010e.pdf, see below; and *infra* notes 244-250.

¹⁰⁶Costa Rica’s Note Verbale of 19 August 2010 on Nicaragua’s Preliminary Partial Submission, *supra*.

status by the American Radio Relay League and has been designated in December 1999 as a part of U.S. National Wildlife Refuge system involving various scientific expeditions.¹⁰⁷

Brazil, Uruguay, Argentina

Brazil's support during UNCLOS III for British proposal to delete Article 121(3) from the Convention noted above could be aligned to the potential status as rocks of: its uninhabited Saint Peter and Saint Paul Rocks, which lie about 600 miles from the Brazilian coastal city of Natal and consist of 12 tiny, barren volcanic rock islets (with land area of 10,000 square meters in total or ca. 0.0016 square mile), being scattered across an area of 350 by 200 meters and of which the largest Southwest Rock (of 3,000 square meters) has had since 1930 a 6-meter lighthouse on the top of 22.5-meter peak and a hut for military personnel and researchers; as well as of oval-shaped uninhabited Rocas Atoll (of 3.7 by 2.5 kilometres, with a lagoon area of 7.5 square kilometres), including the two islets of Cemiterio and Farol Cay (6 meters high, with the land area of 0.36 square kilometres in total), of which the latter has had a lighthouse since the 1960s; Fernando de Noronha Archipelago, located 630 kilometres from St. Peter and Paul Rocks and 354 kilometres from the mainland in the tuna-rich Southern Atlantic and comprising 21 volcanic islands, islets and rocks, of which the main island de Noronha (6.2 by 2.2 miles, with an area of 7.1 square miles) - that makes up 91% of the total Archipelago's area - was fortified by Portugal which founded the first permanent settlement (Vila dos Remedios) in 1770, and hosted telegraphy arrangements of the South American Company, the French Cable and the Italian Intalcable, with 70% of the Archipelago having been declared by Brazil as a national park in 1988, and with the Fernando de Noronha Archipelago and Rocas Atoll having been designated as the UNESCO World Heritage Site of Brazilian Atlantic Islands in 2001; and two volcanic barren islands of Trindade (of 10.1 square kilometres) and Martim Vaz (of aggregate area of 0.3 square kilometre), which lie 1,140 kilometres from the mainland and are uninhabited, except for a 32-man garrison of the

¹⁰⁷For calculations concerning the prospective boundary between Cuba, Haiti, Jamaica and the uninhabited U.S. Navassa Island (also claimed by Haiti), see "Etats-Unis/Haiti, Souverainete sur lile de Navassa" (1999) CIII RGDIP 194; *Limits in the Seas No.125 - Jamaica's Maritime Claims and Boundaries* (U.S. Department of State 2005); V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 268, 348, 353-354 & Fig.14.3 at 608 at <http://www.brill.nl/maritime-political-boundaries-world>; Navassa Island at www.wikinfo.org/wiki.php?title=Navassa_Island; www.webster.edu/~corbetre/haiti/misctopic/navassa/navassa.htm & www.webster.edu/~corbetre/haiti/misctopic/navassa/claimown.htm; Navassa Map at www.doi.gov/oia/Islandpages/navassamain.htm.

Brazilian Navy, which established the Oceanographic Station at Trindade in 1957 and has been carrying out Marine Turtle Protection and Research Programme since 1982.¹⁰⁸

Upon Brazil's historic roll-back from its 200-mile territorial sea, all these insular formations were permitted to generate full 200-mile EEZ under the 1993 Act,¹⁰⁹ as subsequently reinforced by Brazil's 2004 Submission to the CLCS concerning its outer continental shelf beyond 200 miles (equaling 911,847 square kilometres in total), of which limits in the two segments involving oceanic islands, i.e., OL2-OL3 (Saint Peter and Saint Paul Rocks) and OL4-OL5 (Trindade and Martim Vaz Islands) coincide with the 200-mile

¹⁰⁸List of Islands of Brazil at www.wikinfo.org/wiki.php?title=List_of_islands_of_Brazil; Saint Peter and Paul Rocks at http://www.425dxn.org/dc3mf/pepa_e.html & www.wikinfo.org/wiki.php?title=Saint_Peter_and_Paul_Rocks, noting that the largest of 12 Rocks are: Southwest Rock - 3,000 square meters and 22.5 meters high; Southeast Rock - 1,500 square meters; Northwest Rocks - 1,000 square meters; Northeast Rock - 1,000 square meters; Rocas Atoll at www.wikinfo.org/wiki.php?title=Rocas_Atoll; Fernando de Noronha Archipelago at www.noronha.com.br/index.html & www.wikinfo.org/wiki.php?title=Fernando_de_Noronha, noting that in apart from the main island Fernando de Noronha, from which the group gets its name (after leader of the 1501-1502 expedition which discovered this Archipelago), other formations include: islands of de Rata, Sela Gineta, Cebeluda and San Jose, together with the islets of Leao and Viuva; UNESCO Heritage Site of Fernando de Noronha and Atol das Rocas at http://whc.unesco.org/pg.cfm?cid=31&id_site=1000; Trindade and Martim Vaz at http://www.425dxn.org/dc3mf/martin_v.html, www.wikinfo.org/wiki.php?title=Trindade_and_Martim_Vaz, noting that Martim Vaz comprises: Norte - 65 meters high, Racha (Martim Vaz) - 500 by 800 meters; and Sul - 122 meters high, with the latter being the easternmost point of Brazil; www.worldwildlife.org/wildworld/profiles/terrestrial/nt/nt0172_full.html.

¹⁰⁹J.A. Roach and R.W. Smith, *United States Responses to Excessive Maritime Claims* (2nd Ed. 1996) 152, noting Brazil's roll-back from 200-mile to 12-mile TS in 1993; Brazil's 1993 Act on the Territorial Sea, Contiguous Zone, EEZ, Continental Shelf and Other Matters, 2004 Straight Baselines and Outer EEZ Coordinates, *UN Law of the Sea Bulletin* 17 (1993 No.23); 25 (2004 No.55); 15 (2005 No.56) and Tables of Charts and Geographical Coordinates at www.un.org/Depts/los/.

distance.¹¹⁰ In the 2004 Submission (which was only the second after the inaugural 2001 Submission of Russia): “The Brazilian Government testifies that it is not involved in any territorial dispute concerning maritime areas with another State” and the Submission does not refer to the required extension beyond 200 miles of the boundaries established by the 1972 Brazil/Uruguay Demarcation of the Sea Outlet of the Arroyo Chui and Maritime Delimitation Agreement and the 1981 Brazil/France (French Guyana) Maritime Delimitation Agreement.¹¹¹ Nor is extension of the 1972 Brazil/Uruguay Agreement referred to in the ensuing Uruguay’s 2009 Submission, which echoed Brazil’s approach by stating that: “There exist, at present, no unresolved disputes over the maritime border with either of Uruguay’s neighbouring countries, Argentina or Brazil.”¹¹² Out of 4 foot of slope (FOS) points determined in Uruguay’s Submission between the Northern border, with

¹¹⁰Brazil's 2004 Submission, page 5 in fine at www.un.org/Depts/los/clcs_new/submissions_files/submission_bra.htm, Letters from the United States to UN Under-Secretary-General for Legal Affairs Nicolas Michel, raising doubts as to fulfillment of the thickness of sediments requirements under UNCLOS Article 76(4) in what Brazil calls "Vitoria Trindade Ridge" area, of 25 August and 25 October 2004; Brazil's 2006 Addendum and the 2007 CLCS Recommendations, *id.*, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; CLCS Examines Submission of Brazil, *Press Release SEA/1816* of 6 October 2004 at www.un.org/News/Press/docs/2004/sea1816.doc.htm; 15th CLCS Session, 4-22 April, *Press Release SEA/1819* of 29 April 2005 at www.un.org/News/Press/docs/2005/sea1819.doc.htm, during which Brazil had provided, on the CLCS' request, additional material clarifying its Submission as referred to in, *UN Secretary-General Oceans Report*, UN Doc. A/60/63/Add.2, para.11 (2005) and the Legal Opinion of UN Under-Secretary-General for Legal Affairs Nicolas Michel [<http://untreaty.un.org/ola>], UN Doc. CLCS/44 (3 May 2005) and CLCS/46 (7 September 2005) at www.un.org/Depts/los/clcs_new/clcs_home.htm; 16th CLCS Session, 29 August-16 September 2005, UN Doc. CLCS/48 (2005) and *Press Release SEA/1845* of 26 September 2005 at www.un.org/News/Press/docs/2005/sea1845.doc.htm; followed by Brazil's Addendum of 1 February (transmitted to the CLCS on 1 March) 2006, complementing its 2004 Submission; *Oceans and the Law of the Sea - Report of the Secretary-General*, UN Doc. A/61/63, paras 36-39 (2006); 17th CLCS Session, 20 March-21 April, *Press Release SEA/1851* of 26 April 2006 at www.un.org/News/Press/docs/2006/sea1851.doc.htm; 19th CLCS Session, 5 March-13 April 2007, *Press Release SEA/1882* of 20 April 2007 at: www.un.org/News/Press/docs/2007/sea1882.doc.htm; Vladimir Jares (UNDOALOS), “The Work of the CLCS”, in: Davor Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 459-461; and *supra* note 3. See also Brazil Oil & Gas Maps at www.rigzone.com/news/image_results.asp?ctry_id=24; Brazil Oil of 25 August 2008 at <http://news.bbc.co.uk/2/hi/business/7580473.stm>, 29 August 2008 at www.rigzone.com/news/article.asp?a_id=66056 & 30 June 2011 at <http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/8608288/BG-Group-doubles-estimate-of-Brazil-Santos-Basin-oil-reserves.html>.

¹¹¹Edwin Egede, “Submission of Brazil and UNCLOS Article 76” (2006) 21 IJMCL 33-55 at www.brill.nl/estu, noting at 39, lack of reference in Brazil's 2004 Submission to the required extension beyond 200 miles of the boundaries established by the 1972 Brazil/Uruguay Agreement [in force: 12 June 1975, 1120 UNTS 133; <http://www.state.gov/documents/organization/61369.pdf> & <http://www.state.gov/g/oes/ocns/opa/convention/c16065.htm>] and the 1981 Brazil/France (French Guyana) Agreement [in force: by signature, (1986) 25 ILM 367].

¹¹²Uruguay’s Submission to the CLCS, Section 3: Absence of Territorial Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_ury_21_2009.htm; Petrobras (Brazil)/Uruguay Offshore Oil Exploration of 10 February 2010 at http://www.rigzone.com/news/article.asp?a_id=87284 and Map at http://www.rigzone.com/news/image_detail.asp?img_id=6062&a_id=87284 & <http://www.offshore-mag.com/index/article-display/6848555329/articles/offshore/company-news/latin-america/2010/02/petrobras-ypf-petrogral.html>; Statement by the CLCS Chairman, UN Doc. CLCS/72, para.17 (16 September 2011) at www.un.org/Depts/los/clcs_new/clcs_home.htm; and *supra* note 3.

Brazil, and the Southern border, with Argentina, the 2009 Submission of Argentina objected fixed point (FP) 01, i.e., the southernmost point in Uruguay's Submission which "is equidistant from Punta Médanos (...), Argentina, and Cabo Santa María in Uruguay (...), according to Article 70 of the Río de la Plata and Maritime Front Treaty (Tratado del Río de la Plata y su Frente Marítimo)" and it clarified that: "The abovementioned point FP 01 of the Uruguayan Submission cannot be taken as a point of the maritime lateral boundary between the two countries since such boundary has not yet been demarcated in that sector, an operation which must necessarily be bilateral."¹¹³

Argentina, UK (Falklands), UK (Ascension), Chile, Peru, Ecuador

The 2009 Argentina's Submission to the CLCS did not classify under Disputes either its future delimitation of the outer CS with Uruguay referred to above or its outer CS delimitation with Chile, which filed its own Preliminary Submission two weeks after Argentina's Submission.¹¹⁴ However, Argentina did list under Disputes the Spanish name of Falkland Islands, as well as South Georgia and South Sandwich Islands which are the Sub-Antarctic insular territory in the South Atlantic Ocean administered from the Falklands (Islas Malvinas, Georgias del Sur and Sandwich del Sur), and it stressed that the United Nations, the OAS and other international and regional fora acknowledge the existence of the sovereignty dispute between Argentina and Britain over these islands and the surrounding maritime areas, including the continental shelf and that, therefore, Argentina does not and will not recognize any activity or measures that may be carried out without its consent with respect to these islands.¹¹⁵ Britain's Note Verbale of 6 August 2009 replied that the UK has no doubt about its sovereignty over Falklands, South Georgia and South Sandwich Islands and the surrounding maritime areas (under the 1986 UK Declaration in

¹¹³2009 Submission of Argentina, at 7, Sec. G.1: End Points of Outer Limits - Uruguay at http://www.un.org/Depts/los/clcs_new/submissions_files/arg25_09/arg2009e_summary_eng.pdf and 1973 Argentina/Uruguay Treaty of the Rio de la Plata and Its Maritime Front, Article 70 at <http://www.state.gov/documents/organization/61478.pdf> & <http://www.state.gov/e/oes/ocns/opa/c16065.htm> and http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3.

¹¹⁴2009 Submission of Argentina, at 7, Section G.2: End Points of Outer Limits: Chile at http://www.un.org/Depts/los/clcs_new/submissions_files/arg25_09/arg2009e_summary_eng.pdf, *supra*, and 1984 Argentina/Chile Treaty of Peace and Friendship, (1985) 24 ILM 1; UNRIAA XXI, 240; Sir Elihu Lauterpacht QC, "Whatever Happened to the *Beagle Channel Award?*", in *Le Droit International au Service de la Paix, de la Justice et du Développement - Mélanges Michel Virally* (A. Pedone 1991) 359-371; *UN Law of the Sea Bulletin* Chile's Note of 6 September 1996, 83-85 (1997 No.33) and Argentina's Reply of 14 May 1997, *id.*, at 101-102 (1997 No.35); Chile's Declaration upon UNCLOS' Ratification, *id.*, at 9; Chile's 2009 Preliminary Submission to the CLCS at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/chl2009preliminaryinformation.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3.

¹¹⁵Submission of Argentina of 21 April 2009, at 7-8, Section H: Disputes and UK Note Verbale of 6 August 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/arg25_09/arg2009e_summary_eng.pdf, *supra*. Argentina's Submission was also protested on account of its claim to Antarctica in Notes Verbales of United States of 19 August 2009, Russia - of 24 August, India - of 31 August, Netherlands - of 30 September and Japan - of 19 November 2009, *id.* On Sub-Antarctic Islands, see also *infra* notes 310-315.

Maritime Jurisdiction around the Falklands and the 1993 Proclamation of Maritime Zone around South Georgia and South Sandwich Islands) and the outer CS beyond 200 miles, and that there can be no negotiations on the sovereignty unless and until such time as the Falkland Islanders so wish. Based on its longstanding practice,¹¹⁶ Britain's 2009 Note Verbale therefore rejected those parts of Argentina's Submission which claim outer CS around these Islands and requested that the CLCS does not examine those parts (i.e. any fixed points greater than RA-481, except between fixed points RA-3458 and RA-3840).¹¹⁷

This position was reiterated in the UK 2009 Partial (Falkland Islands, South Georgia & South Sandwich) Submission, which - pursuant to UNCLOS Article 76(10) and para.2(a) of Annex 1 of the CLCS Rules quoted before - informed the CLCS that this UK Partial Submission overlaps with Argentina's Submission, that Britain has no doubt about its sovereignty over these Islands and their surrounding maritime areas, and that this UK Partial Submission and the CLCS Recommendations will not prejudice matters relating to

¹¹⁶Note that while ratifying treaties, including the UNCLOS, Britain consistently declares that as the Administering Authority of these territories over which it has the sovereignty, the UK extends these treaties to the Falkland Islands and to South Georgia and the South Sandwich Islands, and that claims of corresponding Argentina's declarations are accordingly rejected. On the pair of *United Kingdom v. Argentina* and *United Kingdom v. Chile Antartica (Discontinuance)* Orders, ICJ Reports 1956, 12, 15, see Sir Humphrey Waldock, "Disputed Sovereignty in the Falkland Islands Dependencies" (1948) 25 BYIL 311-353; Sir Arthur Watts, *International Law and the Antarctic Treaty System* (1992) 118-136; Kwiatkowska, *Decisions of the World Court* (Second Revised Edition 2010), *supra* note 1, at 202-204. See also Britain's 1994 Proclamation on 200-Mile Exclusive Fishery Zone Around the Falklands, *UN Law of the Sea Bulletin* 79 (1995 No.27); 65 BYIL 600-601 (1997); *UN Secretariat - Working Paper on Falkland Islands (Malvinas)*, UN Doc. A/AC.109/2005/17 (11 April 2005); Falklands Oil Within and Beyond 200 Miles [including Map] of 17 February 2006 at www.rigzone.com/news/article.asp?a_id=29561; Falklands War's 25th Anniversary of 1 April 2007 at www.iht.com/articles/2007/04/01/news/falklands.php & UK Statement at www.fco.gov.uk/; The New Falkland Islands' Constitution, UN Docs A/63/671 and A/63/690 (3 and 26 January 2009); UN Doc.A/64/621 (8 January 2010); British Start Falklands Oil Drilling of 22 February 2010 at <http://news.bbc.co.uk/2/hi/americas/8527307.stm> & www.nytimes.com/2010/02/22/world/americas/22argentina.html; Argentina Asks UNSG to Bring UK into Falklands Talks of 24 February 2010 at <http://news.bbc.co.uk/2/hi/americas/8533860.stm> & www.un.org/apps/news/story.asp?NewsID=33888&Cr=&Cr1; UN Docs A/AC.109/2010/15 (16 March 2010), A/64/717, A/64/722 (18 March 2010); British FCO Statement Reaffirms Sovereignty over Falklands of 18 May 2010 at www.fco.gov.uk/en/news/latest-news/?view=News&id=22240756 & <http://edition.cnn.com/2010/WORLD/americas/05/18/falklands.uk.argentina/index.html> and UK Letters, UN Docs A/64/787 (21 May 2010) & A/64/813 (11 June 2010); Falkland Islands Marine Protection Zone of 21 December 2011 at <http://www.telegraph.co.uk/earth/environment/8939756/Falkland-Islands-marine-protection-zone-could-prompt-Argentina-backlash.html> and South American Trading Bloc Bans Ships with Falklands Flags of 21 December 2011 at <http://www.bbc.co.uk/news/uk-16280613> & <http://www.telegraph.co.uk/news/worldnews/southamerica/falklandislands/8969569/South-American-trading-bloc-bans-ships-with-Falklands-flags.html>; UK Foreign Secretary's Statement to the House of Commons on the Falkland Islands of 10 January 2012 at <http://www.fco.gov.uk/en/news/latest-news/?view=PressS&id=713967382>; UN Press Conferences of 10 February 2012 of the UK and Argentina at http://www.un.org/News/briefings/docs/2012/120210_UK.doc.htm, http://www.un.org/News/briefings/docs/2012/120210_Argentina.doc.htm, <http://www.voanews.com/english/news/americas/Argentina-Launches-Protest-at-UN-over-Falklands-139149634.html> & <http://www.bbc.co.uk/news/world-latin-america-16993764>; Falkland Islands News at <http://www.telegraph.co.uk/news/worldnews/southamerica/falklandislands/>.

¹¹⁷UK Note Verbale of 6 August 2009 on Argentina's Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/arg25_09/arg2009e_summary_eng.pdf, *supra*.

delimitation of boundaries between the United Kingdom and any other state.¹¹⁸ Argentina's Note Verbale of 20 August 2009 denied all these UK views, rejected all limits proposed in the UK Partial (Falkland Islands, South Georgia & South Sandwich) Submission and in the accompanying maps and charts, and requested the CLCS that it should neither consider nor qualify all these British submissions and that, accordingly, Argentina would expressly object to the CLCS making Recommendations thereon.¹¹⁹ It is noteworthy that Argentina (but not Britain) has been the CLCS member and that Argentina has also taken over in 2011 chairmanship of influential Group of 77 and has resumed its claim to the Falklands.¹²⁰

Whereas UK's 2009 Partial (Falkland Islands, South Georgia & South Sandwich) Submission discussed above referred to "Other Potential Overlapping Submissions", the preceding UK 2008 Partial (Ascension Island) Submission contained section of "Absence of Disputes" and involved area which is indeed not the subject of any dispute - nor any pending

¹¹⁸UK's Partial Submission (Falkland Islands, South Georgia and the South Sandwich Islands) to the CLCS, Section 5: Other Potential Overlapping Submissions of 11 May 2009 and Argentina's Note Verbale of 20 August 2009, see www.un.org/Depts/los/clcs_new/submissions_files/submission_gbr_45_2009.htm & http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; UK's CLCS Submissions of 8 April 2009 at <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=16057770>; Statements by the CLCS Chairman, UN Docs CLCS/64 (1 October 2009) and CLCS/66 (30 April 2010) at www.un.org/Depts/los/ & www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3. On Britain's intention to make Partial Submission (Falkland Island) to the CLCS, see press comments concerning UK Partial Submission (Ascension Island) to CLCS of August 2008, referred to *infra*.

¹¹⁹*Id.*, Argentina's Note Verbale of 20 August 2009 at www.un.org/Depts/los/clcs_new/submissions_files/submission_gbr_45_2009.htm.

¹²⁰2011 Agenda of Group of 77 [now already 131 of 193] of 12 January 2011 at http://www.un.org/News/briefings/docs/2011/110112_Arguello.doc.htm [Chair of Group of 77 was taken over on 11 January 2012 from Argentina by Algeria at http://www.un.org/News/briefings/docs/2012/120111_Algeria.doc.htm]. After Mauritius launched UNCLOS Annex VII *Chagos Protected Marine Area* Arbitration against Great Britain, *infra* notes 293-294, Argentina's President Resumed Claim to the Falklands of 4 April 2011 at <http://www.telegraph.co.uk/news/worldnews/southamerica/falklandislands/8426897/Argentinas-president-stokes-up-claim-to-the-Falklands.html> and *supra* note 116.

delimitation - with any other state.¹²¹ Ascension Island, along with Tristan da Cunha, are the dependencies of British overseas territory of Saint Helena, located just south of the equator in the South Atlantic Ocean. In addition to 440,000 square kilometres of its 200-mile EEZ around Ascension, Britain was to gain nearly 200,000 square kilometres of sea-bed beyond 200 miles and it regarded, moreover, this 2008 Partial (Ascension Island) Submission as a prelude to the UK's 2009 Partial (Falkland Islands, South Georgia & South Sandwich) Submission referred to earlier. In parallel to crisis stirred by Argentina over Falklands since February 2010, the UK's Partial (Ascension Island) Submission was rejected by the CLCS Recommendations [prepared with participation of Argentina, but not Britain] of 15 April 2010, which, in turn, were protested in the UK Note Verbale of 11 January 2011. This UK Note expressed disappointment with the CLCS Recommendations that Britain ought not to establish limits of the outer CS with respect to Ascension Island and it expressed doubts as to whether the CLCS approach was entirely consistent with the UNCLOS and would not benefit from taking (pursuant to CLCS Rule 57) expert legal advice on the entitlement of coastal states to the outer CS beyond 200 miles on the basis of mid-ocean ridges.¹²²

¹²¹United Kingdom's 2008 Partial Submission (Ascension Island), Section 5: Absence of Disputes and Notes Verbales on Antarctica of the NL and Japan of 28 August 2009 and 19 November 2009 at www.un.org/Depts/los/clcs_new/submissions_files/submission_gbr.htm; 22nd CLCS Session, 18 August-12 September 2008, *Press Release SEA/1908* of 12 September 2008 at www.un.org/News/Press/docs//2008/sea1908.doc.htm. See also Britain Lays Claim in the CLCS to 200,000 Square Km of the South Atlantic Seabed of 24 May 2008 at www.guardian.co.uk/world/2008/may/24/antarctica.arctic & http://news.bbc.co.uk/2/hi/uk_news/7418723.stm; 7 August 2008 at http://news.bbc.co.uk/2/hi/uk_news/magazine/7545602.stm; British Claim to Ascension Sea-Bed in CLCS of 27 August at http://news.bbc.co.uk/2/hi/uk_news/7583353.stm and 28 August 2008 at www.timesonline.co.uk/tol/news/politics/article4622286.ece, www.guardian.co.uk/politics/2008/aug/28/foreignpolicy.unitednations & www.independent.co.uk/news/uk/home-news/britain-seeks-to-expand-its-empire-with-77000-square-miles-of-atlantic-seabed-910765.html & <http://www.telegraph.co.uk/news/uknews/2630103/Britains-battle-for-Ascension-island-oil-reserves.html>; Statements by the CLCS Chairman, UN Docs CLCS/64 (1 October 2009) and CLCS/70, paras 66-67 (11 May 2011) and the CLCS Recommendations (Ascension) of 15 April 2010 at www.un.org/Depts/los/clcs_new/submissions_files/submission_gbr.htm, *supra*, as protested in the UK Note Verbale of 11 January 2011, *id.* & http://www.un.org/Depts/los/clcs_new/submissions_files/gbr08/gbr_nv_11jan2011.pdf; Statement of CLCS Chairman, UN Doc. CLCS/66 (30 April 2010) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; UN Dismisses UK Claim to Ascension of 24 June 2010 at www.guardian.co.uk/world/2010/jun/24/ascension-island-oil-exploration/print and Argentina (which likely biased CLCS) Satisfied with CLCS Dismissal <http://www.allvoices.com/contributed-news/6228668-un-stops-uk-oil-exploration-in-island-territory-clear-message-by-un>; Lathrop, *Continental Shelf Delimitation Beyond 200 Nautical Miles*, in *ASIL/IMB*, Vol. VI (2011) at <http://www.brill.nl/international-maritime-boundaries-2>, *supra* note 3, noting that UK's 2008 Partial Submission (Ascension Island) is rare example of a Submission that does not implicate any international boundary relationship; http://en.wikipedia.org/wiki/St._Helena & http://en.wikipedia.org/wiki/Ascension_Island.

¹²²*Id.*, UK Note Verbale of 11 January 2011 at http://www.un.org/Depts/los/clcs_new/submissions_files/gbr08/gbr_nv_11jan2011.pdf. Such expert legal advice could - as was not mentioned in the UK Note Verbale - be based on Rule 57 of Section XIV: Advice by Specialists of the CLCS Rules of Procedure, UN Doc. CLCS/40/Rev.1 (17 April 2008), *supra* note 3, which Rule 57 provides that:

1. The Commission may, to the extent considered necessary and useful, consult specialists in any field relevant to the work of the Commission.
2. The Commission shall decide in each case the way in which such consultations may be conducted.

Chile, which belongs to 15 states possessing the largest EEZs worldwide, proclaimed already in 1947 the 200-mile EEZ adjacent to all its continental and island coasts, thus including Sala y Gomez and Easter Islands, which lie over 2,000 miles (3,220 kilometres) from the Chilean coastline and of which the Easter Island lies about 250 miles from Sala y Gomez and 2,000 kilometres away from tiny Britain's inhabited Pitcairn Island.¹²³ By contrast to uninhabited Sala y Gomez which consists of two rocks (of 0.15 square kilometres in total and 26 meters high) that were declared by Chile a nature sanctuary and possess automated beacon and a tsunami warning system (since 1994), there seems to be no doubt as to a full island status of the mostly volcanic rock, triangular-shaped Easter (or Isla de Pascua or Rapa Nui), which is 24 kilometres long and 12 kilometres wide, has an area of 165 square kilometres and population of about 3,791 (70% Polynesian and 30% Chilean) living in the town of Hanga Roa, and which is famous for its numerous prehistoric and spectacular stone statues located along the coastline.¹²⁴

Two other Chile's potential rocks of volcanic origin - Isla San Felix (183 metres high, 5 kilometres long and 1,000 metres wide) and Isla San Ambrosio (173 metres high, 3 kilometres long by 850 metres wide) form - along with several rocks (Isla Gonzales and Roca Catedral) - Desventuradas (in Spanish: Unfortunate) Islands, which are located ca. 870 kilometres off the Chilean coast and 2,800 kilometres from Easter Island, and which were sighted by Ferdinand Magellam in 1520; the flora and fauna (marine and land bird species) of the Desventuradas are of great scientific interest, while there are a single-runway military airfield and a detachment of the Chilean Navy in San Felix.¹²⁵

The 200-mile EEZs around San Felix and San Ambrosio, as well as Easter and Sala y Gomez Islands were reinforced by Chile's Preliminary Submission to the CLCS of 8 May 2009, which in addition used these islands for the purpose of suggesting the outer limits of Chilean continental shelf beyond 200 miles.¹²⁶ Apart from these two areas, Chile's Preliminary Submission covered three more areas of Taitao, Juan Fernandez Islands and Antarctica. In the context of Chile's maps purporting to show the maritime boundary between Peru and Chile, Peru's Note Verbale of 12 April 2010 drew attention to Peru's 2001 Notes to UNDOALOS stating that Peru has not signed any treaty delimiting a maritime

However, Statement by the CLCS Chairman, UN Doc. CLCS/70, paras 66-67 (11 May 2011) at http://www.un.org/Depts/los/clcs_new/clcs_home.htm rejected UK Note Verbale and suggested that if it so wishes the UK make a revised or new Partial Submission (Ascension Island).

¹²³M.M. Whiteman, *Digest of International Law*, Vol.4 (U.S. Department of State 1965) 763 [Chile, Ecuador, Peru], 1089-1092 [1952 CEP Santiago Declaration].

¹²⁴Sala y Gomez at http://en.wikipedia.org/wiki/Sala_y_Gomez, noting that the two rocks are connected by a narrow isthmus in the north and that the total length over the two connected rocks northwest-southeast is 770 meters; Sala y Gomez Nature Sanctuary at www.wetlands.org/inventory/&/OceaniaDir/ChileanTerr.htm; Easter Island at http://en.wikipedia.org/wiki/Easter_Island, www.wikinfo.org/wiki.php?title=Easter_Island, www.waymarker.com/uk/m1/rapanui/digest1.htm & <http://exn.ca/mysticplaces/easterisland.asp>; Did Easter Island Get "Ratted" Out? of 5 December 2005 at www.usatoday.com/news/nation/2005-12-05-easter-island_x.htm.

¹²⁵Desventuradas Islands at http://en.wikipedia.org/wiki/Desventuradas_Islands.

¹²⁶Chile's 2009 Preliminary Submission to the CLCS at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/chl2009preliminaryinformation.pdf referred to in the context of Argentina's 2009 Submission in this section *supra*, Peru's Note Verbale of 12 April 2010 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/per_re_chl_2010e.pdf and Chile's Reply of 27 April 2010 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/chl_re_per_re_chl_2010e.pdf & http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; *supra* note 3; Chile's ICJ Agent Maria Teresa Infante, "The Outer Continental Shelf and South American Coastal States", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 586-588.

boundary. In addition, Peru's present 2010 Note Verbale recalled Peru's Application instituting in 2008 the *Peru v. Chile Maritime Delimitation* case and requesting the ICJ to determine, in accordance with international law, the course of the *Chile/Peru* boundary between the maritime zones of the two states in the Pacific Ocean and to recognize in favour of Peru "a maritime zone lying within 200 miles of Peru's coast, and thus appertaining to Peru, but which Chile considers to be part of the high seas".¹²⁷ Therefore, Peru's 2010 Note Verbale expressed its formal reservations regarding any parts of Chile's 2009 Preliminary Submission and its subsequent extension of the outer CS that could affect Peru's boundaries with neighbouring states. Although Peru's 2010 Note Verbale did not clearly state it, its effect was the same as that of Nicaragua's 2010 Preliminary Partial Submission referred to above which excluded maritime area involved in the ICJ *Nicaragua v. Colombia; Costa Rica and Honduras Intervening (Merits)* Judgment from Nicaragua's Submission. Chile, however, which has been acting as Respondent in the ICJ *Peru v. Chile* case did not share Peru's view as to existence of the boundary dispute between them. In particular, Chile's Note Verbale of 27 April 2010 replied in accordance with position taken by Chile in the ICJ *Peru v. Chile* case that Chile's Preliminary Submission to the CLCS of 8 May 2009 "could not disregard the existence of international treaties that established the maritime boundary between both countries, which are in force", including the CEP (Chile/Ecuador/Peru) Treaties of 1952 and 1954, concordant with Proclamations of 1947 on the Maritime Zone of Sovereignty and Jurisdiction, together with bilateral acts and longstanding practice, which constitute antecedents of legally binding nature for both countries of the existence of a maritime boundary.¹²⁸

Ecuador was reported to announce that it would not seek third-party (or non-party) intervention in the ICJ *Peru v. Chile* case referred to above [were the ICJ to reaffirm 1952-1954 CEP Treaties, Peru would have to accept its boundary conforming therewith]. After its 1951 claim to a 12-mile territorial sea around remote, volcanic Galapagos (Colon) Archipelago, which is located in the Pacific Ocean on the equator, about 600 miles (800 to 1,000 kilometres) west of Ecuador and comprises 13 major islands, 6 minor islands and 42 (including Darwin and Wolf) islets of an area of 8,000 square kilometres in total, which possess Charles Darwin Research Station and have been designated as Galapagos Marine Reserve in 1964 and deemed as UNESCO World Heritage Site in 1978, Ecuador again asserted the archipelagic status of Galapagos by extending in 1973 its 200-mile TS around it and by claiming, under its 1985 Decree, the outer CS beyond 200 miles around Galapagos; it was followed by establishment in 1986 of the Galapagos Marine Resources Reserve (extending 15 miles from its baselines), upgraded to the Galapagos Reserve of Marine

¹²⁷*Peru v. Chile Maritime Delimitation Case, ICJ Press Release No.2008/1*, 16 January 2008 at www.icj-cij.org; Peru Takes Chile to the World Court over Maritime Dispute at www.un.org/apps/news/story.asp?NewsID=25314&Cr=ICJ&Cr1, www.ft.com/cms/s/0/f7c33aa6-c47a-11dc-a474-0000779fd2ac.html, <http://edition.cnn.com/2008/WORLD/americas/01/16/peru.chile.ap/index.html> and with Map at www.dur.ac.uk/ibru/news/; Chile Recalls Its Ambassador from Peru of 17 January 2008 at www.dailycomet.com/article/20080117/API/801170699, <http://news.bbc.co.uk/2/hi/americas/7194854.stm> & www.eltiempo.com/internacional/latinoamericas/noticias/ARTICULO-WEB-NOTA_INTERIOR-3923549.html; What Does Chile Think About Its Case with Peru? Of 10 November 2010 at <http://english.peopledaily.com.cn/90001/90777/90852/7194626.html>; Peru ICJ Team and Data, www.peru.com/noticias/especiales/2008/diferendo_maritimo/index.asp.

¹²⁸Chile's Reply of 27 April 2010 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/chl_re_per_re_chl_2010e.pdf, *supra*. For Ecuador/Peru Maritime Delimitation Agreement of 2 May 2011, see *infra* note 131.

Resources in December 1996 and the Galapagos Marine Protected Area in March 1998, and by inclusion of Galapagos in June 2007 into the UNESCO List of World Heritage in Danger, from which Galapagos was removed in July 2010.¹²⁹ Although while enclosing Galapagos with archipelagic baselines, Ecuador used as the northernmost basepoints the youngest, uninhabited Darwin (or Culpepper, 165 meters high) and Wolf (or Wenman, 250 meters high) Islets, which are two eroded volcanos located on a volcanic ridge (the Darwin-Wolf Lineament) extending from the north-west part of the Galapagos Platform to the Galapagos Spreading Center, some 150 kilometres to the north, the Galapagos claims were protested by the United States not on account of the used basepoints, but because claims to outlying archipelagos - such as effected by Ecuador (Galapagos), as well as by Denmark (Faroes), Spain (Canaries), Portugal (Azores), Australia (Houtman Abrolhos and Furneaux Islands) or India (Andaman and Nicobar Islands) - are in contravention of the rule codified in the UNCLOS Articles 46-47 permitting to draw archipelagic straight baselines only by the archipelagic states.¹³⁰

¹²⁹Galapagos Geography at www.galapagosmap.com/geography.htm, noting that the Galapagos Islands are spread out from Espanola to Tower over a distance of 132 miles (220 kilometres), that the total land area of the Islands is of 4,897 square miles (7,880 square kilometres), and that the total geographical area from Darwin Island to San Cristobal and Espanola equals 28,000 square miles (45,000 square kilometres); Galapagos Map at www.geo.cornell.edu/geology/GalapagosWWW/GalapagosMap.html; Galapagos Islands at www.wikinfo.org/wiki.php?title=Galapagos_Islands; Darwin Research Station at www.galapagos.com/darwin-research-station.htm & <http://news.bbc.co.uk/2/hi/science/nature/7882134.stm>. On Galapagos World Heritage Site and Marine Resources Reserve, see www.galapagosmap.com/national-park.htm, www.galapagosmap.com/marine-reserve.htm, [www.galapagosmap.com/marine-reserve.htm](http://whc.unesco.org/en/list/1) & <http://whc.unesco.org/en/list/1>, noting extension of the 1978 UNESCO Heritage Site in 2001; Special Area to Be Avoided in the Region of the Galapagos Archipelago, IMO Doc. MSC XLII/INF.2 (1980); *UNCLOS III Official Records*, Statement of Valencia-Rodriguez (Ecuador), 135th Meeting-25 August 1980, Vol.XIV, 19 (1982), hoping that outlying archipelagos could be governed by UNCLOS Part IV and stressing that "to protect and defend the flora and fauna of the Galapagos, which were unique in the world, Ecuador was counting on the international technical cooperation"; T. Bustamante, "Ocean Law Developments in Ecuador", in: J.P. Craven, J. Schneider and C. Stimson (eds.), *The International Implications of Extended Maritime Jurisdiction in the Pacific* (Law of the Sea Institute 1989) 230-231; the 1998 Special Regime Law for the Preservation of Galapagos at <http://whc.unesco.org/archive/ecu-gal.pdf>; An Outcry for Galapagos Islands of 11 April 2007 at <http://news.bbc.co.uk/2/hi/americas/6543653.stm>; Galapagos Islands Added to UNESCO List of World Heritage in Danger of 26 June 2007 at www.un.org/apps/news/story.asp?NewsID=23036&Cr=heritage&Cr1; Sea Lions Massacred in Galapagos of 29 January 2009 at <http://news.bbc.co.uk/2/hi/americas/7214860.stm>; Galapagos Damage Must Be Curbed of 11 February 2009 at <http://news.bbc.co.uk/2/hi/science/nature/7884581.stm>; Galapagos Islands Removed from UNESCO List of World Heritage Sites in Danger of 29 July 2010 at <http://www.un.org/apps/news/story.asp?NewsID=35465&Cr=world+heritage&Cr1>.

¹³⁰See *Islas Wolf and Darwin* at www.geo.cornell.edu/geology/GalapagosWWW/WolfDarwin.html; J.A. Roach and R.W. Smith, *U.S. Responses to Excessive Maritime Claims* (1996) 23, 112-122, 154-157. Note that straight baseline system applicable - in accordance with Ethiopia's 1953/56 Maritime Proclamation No.137 (adopted by Eritrea's 1991 Proclamation No.7) - to the Dahlak Archipelago comprising "carpet" of some 350 islands and islets, was relied upon by the 1998 *Eritrea/Yemen (Phase I)* Award [114 ILR 1; (2001) 40 ILM 900; UNRIAA XXII, 211], paras 14, 43, 114, 118, 138-146 and 166, as forming an integral part (together with Mojeidi and an unnamed islet east of Dahret Segala) of Eritrea's mainland coast in pursuance of UNCLOS Article 7, and that the 1999 *Eritrea/Yemen (Phase II)* Award, para.142 [119 ILR 417; (2001) 40 ILM 983; UNRIAA XXII, 335] noted that the reality or validity or definition of "somewhat unusual straight baseline system" said to be existing for the Dahlaks "is hardly a matter that the Arbitral Tribunal is called upon to decide". Since both Eritrea and Yemen were agreed that Dahlaks "are an integral part of Eritrea's mainland coast" [1998 Award, para.118], it seems that they do not exemplify archipelagic enclosure around outlying archipelagos, such as those effected by Ecuador (Galapagos) and other states referred to above.

And Ecuador's claim of 1985 to the continental shelf around Galapagos Archipelago, based on the assumption that the Carnegie Ridge between its mainland and the Galapagos is a prolongation of the continental margin of the mainland (even though scientific evidence testifies to geomorphological independence of the Carnegie Ridge from the continental margin of the South American continent), and likewise Chile's claim of 1985 to 350-mile shelf around mid-oceanic Easter and Sala y Gomez Islands referred to earlier, were protested by the United States, France and Germany on account of application of UNCLOS Article 76(6) and 76(5) respectively, without fulfilling first the thickness of sediments test required by Article 76(4), and not on account of the legal regime of the insular territories concerned.¹³¹

Western & Eastern Gulf of Mexico - Mexico, Cuba, United States

Whereas the maps of the geographical locations and configurations of both Western (USA-Mexico) and Eastern (USA-Cuba-Mexico) Polygons in the Gulf of Mexico were included in the 2007 Mexico's Partial (Western Gulf of Mexico) Submission,¹³² the latter only concerned the Western of these Polygons, which involves two separate Mexico/USA Maritime Boundary Treaties of 4 May 1978 and 9 June 2000.¹³³ Therefore, the 2007 Mexico's Partial Submission stressed that: "it is clear that neither Mexico nor the United States can extend their continental shelves in the Western Polygon beyond the international boundary prescribed in the Continental Shelf Treaty of 9 June 2000" and that: "There are not boundary disputes or controversies in any portion of the outer limits of the continental shelf beyond 200 miles submitted to the CLCS"; accordingly, Mexico proposed for its outer CS limit the same coordinates of the 16 turning points connected by straight lines not exceeding 60 miles in length as those used in the 2000 Mexico/USA Treaty on the Delimitation of the Continental Shelf in the Western Gulf of Mexico Beyond 200 Miles,

¹³¹On Ecuador's 1985 Continental Shelf Declaration (Galapagos), *UN Law of the Sea Bulletin* 109 (1986 No.7) and Chile's 1985 Statement (Easter and Sala y Gomez), *id.*, at 107, see B. Kwiatkowska, "Creeping Jurisdiction Beyond 200 Miles in the Light of the 1982 Law of the Sea Convention and State Practice" (1991) 22 *ODIL* 153, 155-156, also discussing views of F. Orrego Vicuna (of Chile), "International Law Developments in the Southeast Pacific: The Case of Chile", in: *The International Implications of Extended Maritime Jurisdiction in the Pacific* (Law of the Sea Institute 1989) 217, 222-223; remarks made by Bernard H. Oxman and Orrego Vicuna in discussion, *id.*, at 272-273 and 274-275; J.A. Roach and R.W. Smith, *U.S. Responses to Excessive Maritime Claims* (1996) 205-207 (Ecuador) and 207-208 (Chile). On Ecuador as UNCLOS Non-Party State, see Maria Teresa Infante, "The Outer Continental Shelf and South American Coastal States", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 589. For Ecuador/Peru Maritime Delimitation Agreement of 2 May 2011, see *UN Law of the Sea Bulletin* 30-34, incl. Map (2011 No.76) at <http://www.un.org/Depts/los/>.

¹³²2007 Mexico's Partial (Western Gulf of Mexico) Submission, pages 3-4 and Figures 1.1, 1.2 & 1.3 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mex.htm.

¹³³1978 Mexico/United States Treaty entered into force only on 13 November 1997, (1998) 92 *AJIL* 245-249; 2000 Mexico/United States Treaty, (2001) 95 *AJIL* 393-394.

which coordinates and points were endorsed in the 2009 CLCS Recommendations on the 2007 Mexico's Partial (Western Gulf of Mexico) Submission.¹³⁴

It is noteworthy that under the 1978 Mexico/USA Maritime Boundary Treaty, the United States agreed to give full effect to all islands in the construction of the equidistance, because the U.S. stood to gain substantially from, *inter alia*, claim based on sandy/coral Swains Island (also called Olosenga or Quiros or Gente Hermosa or Jennings Island, lying in the Tokelau chain some 170 miles north of Apia, but being politically a part of American Samoa) in relation to Western Samoa.¹³⁵ Under the 1978 Mexico/USA Treaty, particularly influential in determining the course of boundary were two U.S. islands of San Clemente and San Nicolas, which lie 60 miles off the mainland, and Mexican Guadalupe Island (some 20 miles long), which lies about 145 miles off Mexico's mainland, has population of 50 and is a nature reserve, with the same approach of using all islands and rocks having been later applied under the 2000 Mexico/USA Treaty. After CLCS issued its 2009 Recommendations on the 2007 Mexico's Partial (Western Gulf of Mexico) Submission referred to above, doubts were voiced in September 2009 that disappearance (possibly as a result of climate change) of Mexican Bermeja (meaning in Spanish bright red) Island of 80 square kilometres (31 square miles) left Mexico with reduced access to the oil deposits in the Gulf of Mexico.¹³⁶

On 23 June 2010 Mexico and US Presidents issued a Joint Statement on Mutual Intention to Negotiate an Agreement Governing the Disposition and Regulation of Hydrocarbons Reservoirs That Cross Our International Maritime Boundary, whereby they extended a moratorium on drilling and exploitation in a zone near the CS boundary in an area known as the Western Gap, that was ended by the USA/Mexico Transboundary

¹³⁴Mexico's Partial (Western Gulf of Mexico) Submission of 13 December 2007, Section 1, at 4, and Section 4: Absence of Disputes, at 10, and CLCS Recommendations of 31 March 2009, Sections 5.2, 6.1.3 and 6.2: The outer CS Limits at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mex.htm, www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/; *UN Secretary-General Oceans Report*, UN Doc.A/63/63, paras 31-32 (2008) at www.un.org/Depts/los/; 22nd CLCS Session, 18 August-12 September 2008, *Press Release SEA/1908* of 12 September 2008 at www.un.org/News/Press/docs/2008/sea1908.doc.htm; R.J. McLaughlin, "Time to Reexamine a Comprehensive U.S.-Mexico Cooperation Agreement" (2008) 39 ODIL 1, at 11-17; Mexico's Note Verbale to the UN on Its Outer CS in the Western Gulf of Mexico of 19 May 2009, *UN Law of the Sea Bulletin* 32-33 (2010 No.71); Lathrop, "Continental Shelf Delimitation Beyond 200 Nautical Miles", in ASIL/IMB, Vol.VI (2011) at <http://www.brill.nl/international-maritime-boundaries-2>, *supra* note 3, noting that Mexico has by now accepted the 2009 CLCS Recommendations and established its outer CS limit on the basis of those Recommendations in accordance with UNCLOS Article 76; U.S. EEZ and Extended Continental Shelf of 7 June 2011, pp.5-6 at <http://www.heritage.org/research/reports/2011/06/un-convention-on-the-law-of-the-sea-erodes-us-sovereignty-over-us-extended-continental-shelf>, <http://continentalshelf.gov/>, *infra* note 214, noting two small "likely" areas of the U.S. Outer CS (ECS) in the Gulf of Mexico.

¹³⁵J.M. van Dyke, J. Morgan and J. Gurish, "The EEZ of the Northwestern Hawaiian Islands: When Do Uninhabited Islands Generate an EEZ?" (1988) 25 *San Diego Law Review* 425, 431-432; Swains Island at www.janeresture.com/tokelau_islands/swains.htm & www.wikinfo.org/wiki.php?title=Swains_Island, noting that its population is 37, that the nearby Rose Island is often included with Swains, and that the latter was named by Pedro Fernandes de Quiros in 1606 as Gente Hermosa which means "island of the handsome people" and renamed by Captain Henry Hudson in 1841 into Swains; *infra* notes 202, 215 & 220. On Tonga/United States (American Samoa) Maritime Delimitation Negotiations, see Press Release of 20 June 2003 at www.house.gov/list/press/as00_faleomavaega/eniandtongapm.html.

¹³⁶Oil Boom Fuels Mystery of the Missing Bermeja Island, *Times* of 6 September 2009, at 26; Phantom Islands at http://en.wikipedia.org/wiki/Category:Phantom_islands and Bermeja at <http://en.wikipedia.org/wiki/Bermeja>.

Hydrocarbons Agreement of 20 February 2012 which has established a Cooperative Process for Managing the U.S./Mexico Maritime Boundary Region that promotes joint utilization of transboundary reservoirs in the Western Gulf of Mexico.¹³⁷

Cuba's Preliminary Partial (Eastern Gulf of Mexico) Submission of 12 May 2009 was shortly followed by Cuba's Partial (Eastern Gulf of Mexico) Submission of 1 June 2009, stating that the outer CS in the region extends beyond 200-mile EEZs of Cuba, Mexico and the United States, whose overlapping boundaries have not yet been delimited, that Cuba's Submission is without prejudice to these boundaries, and that: "In this area there are no disputes".¹³⁸ Note Verbale of the United States of 30 June 2009 has taken note of the potential overlap between its and Cuba's outer CS, it has stressed that under the UNCLOS (Article 76 and Annex II) and the CLCS Rules of Procedure (Rule 46 and Annex I), the CLCS actions "shall not prejudice matters relating to delimitation of boundaries", and it has assured the CLCS that the Government of the United States does not object to consideration by the CLCS of, and its making of Recommendations on, Cuba's Partial (Eastern Gulf of Mexico) Submission "to the extent that such Recommendations are without prejudice to the establishment of the outer limits of its continental shelf by the United States, or to any final delimitation of the continental shelf concluded subsequently in this area between Cuba and the United States."¹³⁹ A similar position was taken in the Note Verbale of Mexico of 21 August 2009, which has understood that notwithstanding the

¹³⁷USA/Mexico Joint Statement on Mutual Intention to Negotiate an Agreement Governing the Disposition and Regulation of Hydrocarbons Reservoirs That Cross Our International Maritime Boundary of 23 June 2010 at www.state.gov/r/pa/prs/ps/2010/06/143573.htm. See also U.S. District Court Rules Against Drilling Ban of 23-24 June 2010 at <http://www1.voanews.com/english/news/usa/Obama-Administration-to-Appeal-Overtake-of-Deepwater-Drilling-Ban-96977229.html> & <http://www1.voanews.com/english/news/usa/US-Judge-Rules-Against-Maintaining-Offshore-Drilling-Ban-97097279.html>; Obama Administration Reimposes Offshore Oil Drilling Ban of 1 December 2010 at <http://www.ens-newswire.com/ens/dec2010/2010-12-01-091.html> & http://voices.washingtonpost.com/post-carbon/2010/12/obama_administration_will_ban.html & http://www.upi.com/Top_News/US/2010/12/01/Interior-Dept-limits-seas-for-oil-leasing/UPI-83391291240727/; U.S. BOEM Outer Continental Shelf Oil and Gas Leasing Program for 2012-2017 of 8 November 2011 at <http://www.offshore-mag.com/index/article-display/7142251034/articles/offshore/regional-reports/us-gulf-of-mexico/2011/November/boem-announces-proposed.html> & <http://www.oceanlaw.org/>; USA/Mexico Transboundary Hydrocarbons Agreement of 20 February 2012 at <http://www.state.gov/secretary/rm/2012/02/184236.htm> and Agreement's Fact Sheet at <http://www.state.gov/r/pa/prs/ps/2012/02/184235.htm> and <http://www.bbc.co.uk/news/world-latin-america-17108286> & <http://www.nytimes.com/2012/02/21/world/americas/mexico-and-us-agree-on-oil-and-gas-development-in-gulf.html>.

¹³⁸Cuba's 2009 Preliminary Partial (Eastern Gulf of Mexico) Submission, para.1 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cub2009preliminaryinformation.pdf and Cuba's 2009 Partial (Eastern Gulf of Mexico) Submission, Section 4: Absence of Disputes, Notes Verbales of the United States and Mexico of 30 June 2009 and 21 August 2009 respectively at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_cub_51_2009.htm, www.un.org/Depts/los/clcs_new/commission_submissions.htm; Cuba/USA Maritime Boundary Delimitation in the Straits of Florida and Eastern Gulf of Mexico of 16 December 1977, *U.S. Limits in the Seas* No.110 (1990) at <http://www.state.gov/e/oes/ocns/opa/c16065.htm>; Statement by the CLCS Chairman, UN Doc. CLCS/66 (30 April 2010) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; Cuba's Offshore Oil Development: Background and U.S. Policy Consideration of 29 November 2010 at <http://www.hsdl.org/?view&did=12715>; *supra* note 3.

¹³⁹*Id.*, Note Verbale of the United States of 30 June 2009 on Cuba's Partial (Eastern Gulf of Mexico) Submission. For U.S. Fact Sheet on Extended Continental Shelf (ECS), para.6 of 9 March 2009 at www.state.gov/e/oes/rls/fs/2009/120185.htm, see *supra* note 22; and see also Obama Administration Reimposes Offshore Oil Drilling Ban of 1 December 2010 and U.S. BOEM Outer Continental Shelf Oil and Gas Leasing Program for 2012-2017 of 8 November 2011, both *supra* note 137.

CLCS Recommendations on Cuba's Partial (Eastern Gulf of Mexico) Submission referred to above and the outer CS limit determined by Cuba based on those Recommendations in the future, the delimitation of the continental shelf beyond 200 miles in the Eastern Gulf of Mexico shall be carried out by agreement between the states based on international law.¹⁴⁰

Mexico's Partial (Eastern Gulf of Mexico) Submission of 19 December 2011 pointed out that the Eastern Polygon of the Gulf of Mexico is dealineated by the outer limits of the 200-mile EEZs of Mexico, the United States and Cuba, and that their overlapping maritime spaces up to 200 miles have been delineated by means of the 1978 and the 2000 Mexico/USA Maritime Boundary Treaties referred to above and the 1976 Cuba/Mexico Maritime Delimitation Treaty, but that their outer continental shelves beyond 200 miles in the Eastern Gulf of Mexico are yet to be delimited.¹⁴¹ The 2011 Mexico's Partial (Eastern Gulf of Mexico) Submission noted that a clear understanding that the CLCS Recommendations on this Submission will be pursuant to UNCLOS Article 76(10) without prejudice to the outer CS delimitation [meaning that this delimitation will be carried out notwithstanding the outcome of the CLCS Recommendations] was also shared by the 2009 Cuba's Preliminary Partial (Eastern Gulf of Mexico) Submission and the pertaining US 2009 Note Verbale, both referred to above.

¹⁴⁰Mexico's Note Verbale of 21 August 2009 on Cuba's Partial Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_cub_51_2009.htm, quoted *supra*. See also Mexico's Note Verbale on Preparation of Its Preliminary Partial (Eastern Gulf of Mexico) Submission of 1 May 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/mex2009_preliminaryinfo.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm, and an express reservation by Mexico of its right to prepare Partial (Eastern Gulf of Mexico) Submission in its preceding 2007 Mexico's Partial (Western Gulf of Mexico) Submission, page 6, which Submission also contains Maps of Eastern Polygon in the Gulf of Mexico, referred to *supra* at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mex.htm, www.un.org/Depts/los/clcs_new/clcs_home.htm and *supra* note 3.

¹⁴¹Mexico's Partial (Eastern Gulf of Mexico) Submission of 19 December 2011, Section 1: Introduction and Objectives, at 4-8 and Section 4: Absence of Disputes, at 12-13, stating that: "Lack of boundary delimitation agreements in the Eastern Polygon, where there might be overlapping claims, does not represent the existence of disputes" and that "there are no boundary disputes or controversies in any portion of the outer limits of the outer continental shelf beyond 200 miles in the Eastern Polygon submitted to the Commission" at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mex58_2011.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; the 1978 and 2000 Mexico/USA Maritime Boundary Treaties referred to above and the 1976 Cuba/Mexico Maritime Delimitation Treaty, in: ASIL/IMB Vol.I (1993), Report No.2-8, at 565 at <http://www.brill.nl/international-maritime-boundaries-3>; Cuba's Offshore Oil Development (2010) at <http://www.hsd.org/?view&did=12715>, *supra* note 138, at 15, noting that delimitation negotiations in the Eastern Gulf of Mexico will likely await an improvement in Cuba/USA relations; and *supra* note 3.

Submissions in the Northeast and Southeast Asia

Northeast and East Asia - China, Japan, Republic of Korea

From amongst East Asian developing states, only China and the Republic of Korea filed Preliminary Submissions of 11 May 2009 with the CLCS, each of which Submissions was protested by Japan in two (identical) Notes Verbales of 23 July 2009. Republic of Korea has been involved in dispute with Japan over Takeshima/Tok-do (Liancourt) Rocks and in a dispute with China over Ieodo/Suyan (Socotra) Rock. China has been involved in dispute with Japan over Senkaku/Diaoyu (Fishing or Pinnacle) Islands. Japan on its part filed its actual Submission of 12 November 2008, which was questioned in unusual protests of China and the Republic of Korea on account of Japan's use of Okinotorishima. All the islands involved in these disputes potentially fall within an ambit of the rocks-principle as set out in UNCLOS Article 121(3).¹⁴²

The Republic of Korea's 2009 Preliminary Partial (East China Sea) Submission was confined only to a part of the outer CS limits within the 1974 Japan/Korea Joint Development Zone (JDZ) located out to the Okinawa Trough and it was consulted by Korea with both China and Japan, in parallel to their ongoing negotiations on maritime boundary delimitations in this region. Korea's Submission assured the UN Secretary-General as well as China and Japan that this Submission was, consistent with UNCLOS Article 76(10), "without prejudice to the question of delimitation of the continental shelf in the East China Sea, and is without prejudice to any agreement between Korea and any other State as well as the rights of any State not party to any such agreement."¹⁴³

Japan's Note Verbale of 23 July 2009 reserved its right to make additional comments on Republic of Korea's position in the future and it meanwhile stressed that:

It is indisputable that the establishment of the outer limits of the continental shelf beyond 200 miles in an area comprising less than 400 miles and subject to the delimitation of the continental shelf between the States concerned cannot be accomplished under the provisions of the UNCLOS.

¹⁴²On intimate relationship between UNCLOS Article 121(3) and maritime boundary delimitation, see main text - including proposed Article 121(4) - accompanying *supra* notes 9-13.

¹⁴³Republic of Korea's 2009 Preliminary (East China Sea) Submission and Japan's Note Verbale of 23 July 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/kor_2009preliminaryinformation.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; 1974 Japan/Republic of Korea JDZ Treaty [in force: 22 June 1978], 1225 UNTS 113-136; Charney/ASIL IMB Vol.I, Report No.5-12, at 1057-1089 (1993) at <http://www.brill.nl/international-maritime-boundaries-3>; Korea/Japan Dispute at www.american.edu/ted/ice/korea-japan-islands.htm & www.geocities.com/mlovmo/page4.html; J.M. Van Dyke, "The Republic of Korea's Maritime Boundaries"(2003) 18 IJMCL 509, 523-528, 535 at www.brill.nl/estu; Kwiatkowska, *Decisions of the World Court* (Second Revised Edition 2010), *supra* note 1, at 123; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 568-569; *supra* note 3.

This passage implies that were Republic of Korea and/or China to proceed with a Partial (East China Sea) Submission, Japan would request the CLCS to refrain from making Recommendations on such a Submission.¹⁴⁴

The implementation of the 1974 Japan/Republic of Korea JDZ and accompanying Continental Shelf Agreements (ending the delimitation where the Rocks begin to influence equidistance line) has been complicated by the longstanding dispute over two tiny, uninhabited Takeshima/Tok-do (Liancourt) Rocks (151 meters apart) of combined area of 0.23 square kilometre and 168.5 meters high, which are covered by Japan's straight baselines (Point 79 not conforming with UNCLOS)¹⁴⁵ and lie midway the fish/oil-rich East China Sea/Sea of Japan (50 miles east of Korean Ullung-do and 90 miles north-west of Japanese Oki Islands), which serve as a fishing station, have a territorial post erected by the Japanese Coast Guard in 1953, a lighthouse and a helicopter landing pad built in 1954 by Korea, which also built there a wharf in 1996, has kept there some 50 Korean marine police (since President Rhee's 1952 "Peace Line" Declaration), declared the Rocks "a nature monument" in 2002, and installed there the first private Korea Telecom line in 2005, with number of visitors

¹⁴⁴*Id.*, Japan's Note Verbale of 23 July 2009 on Korea's 2009 Preliminary (East China Sea) Submission.

¹⁴⁵For Japan's 15 "groupings" of straight baselines under the 1977 Law No.30 on the Territorial Sea and Contiguous Zone as Amended by the 1996 Law No.73, which cover 162 segments of which 28 per cent exceeds the 24-mile maximum segment length, including over 10 per cent of segments longer than 48 miles, such as 57-mile segment between Point B and Takeshima/Tok-do Point 79 (Group 9), where there is no "fringe of islands along the coast in its immediate vicinity" required by UNCLOS Article 7(1), see *Limits in the Seas No.120 - Japan* at 7-8 (1998) at <http://www.state.gov/e/oes/ocns/opa/c16065.htm>. For parliamentary discussions on using Takeshima as a basepoint, see S. Oda and H. Owada, "Annual Review of Japanese Practice (1976-1977)," (1985) 28 *Japanese Annual of International Law* (JAIL) 59, 132-134. On enclosure under South Korea's 1977 Law on Territorial Sea and Contiguous Zone as Amended by the 1995 Law and the 1978 TS/CZ Enforcement Decree as Amended by the 1996 Decree, of all the islands and rocks off the southern and western coasts - except large inhabited Cheju-do at <http://en.wikipedia.org/wiki/Cheju-do> - by South Korea's excessive straight baselines (Points 6-18, ranging from 12 to 29 miles distant from the mainland and exceeding the maximum 24-mile segment length), see *Limits in the Seas No.121 - South Korea* at 4-6, including Map (1998) at <http://www.state.gov/e/oes/ocns/opa/c16065.htm>; J.A. Roach and R.W. Smith, "Straight Baselines: The Need for a Universally Applied Norm"(2000) 31 ODIL 47, 61-62 and Map at 79, noting that in its reply to the U.S. protest, South Korea considered that its baselines conform to the UNCLOS Article 7 as they do not depart to an appreciable extent from the general direction of the coastline; J.M. Van Dyke, "The Republic of Korea's Maritime Boundaries"(2003) 18 IJMCL 517 at www.brill.nl/estu, noting objections raised by China and Japan with respect to the legality of South Korean baselines; J.M. Van Dyke, "Legal Issues Related to Sovereignty over Dokdo/Takeshima and Its Maritime Boundary" (2007) 38 *Ocean Development & International Law* 157-224.

at Takeshima/Tok-do having increased from 1,673 in 2004 to 40,000 in 2005.¹⁴⁶ After certain inconclusive attempts of reaching resolution in mid-2006, the rocky outcrops of Takeshima/Tokdo (Liancourt) have stirred renewed controversies in mid-2008, when South Korea recalled its Ambassador from Tokyo by means of protest against Japan's announcement that its sovereignty over Takeshima were to be included in a handbook for junior high schools; it was followed by Korea's banning sell of Japanese condoms, seeking to relabel the name "Sea of Japan" into "East Sea" at Russian and other maps, slaughtering live pheasants (Japan's national bird) outside the Japanese Embassy in Seoul, and enhancing habitability of the rocks (sofar inhabited by two civilians and 50 policemen) by setting up a maritime science research center/team, digging wells to self-produce potable water, giving wider access by the public, developing tourism (through building a marine hotel and other means), holding military exercises near disputed islands, developing energy resources such as gas hydrates near these rocks and building a solar power facility upon them, as well as applying for UNESCO World Heritage Site status for the Takeshima/Tokdo Rocks.¹⁴⁷

¹⁴⁶Liancourt Rocks at http://en.wikipedia.org/wiki/Liancourt_Rocks, noting that while over 900 Korean and 2,000 Japanese citizens list Takeshima/Tok-do as their residence, only two people (a married Korean couple) are actual permanent residents; Takeshima Is Japanese Territory at www.pref.shimane.jp/section/takeshima/eng/top.html and Japan MFA at www.mofa.gov.jp/region/asia-paci/takeshima/position.html; Tok-do Is Korean Territory at www.korea.net/News/Issues/issueView.asp?issue_no=45 and National Park at http://kn.koreaherald.co.kr/SITE/data/html_dir/2002/08/24/200208240008.asp. On escalation of the Japan/South Korea dispute as a result of Japan's Bill of 23 February 2005 proposing to set up a symbolic prefectural ordinance establishing 22 February as Takeshima Day, which infuriated South Korea and revived Japan's proposal to submit their dispute to the ICJ, see Seoul Warns Japan over Island Row of 17 March 2005 at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4357183.stm>; Japan-South Korea Ties on the Rocks, including Map, of 23 March at www.atimes.com/atimes/Japan/GC23Dh03.html; 20 June 2005 at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4109666.stm>; South Korea's Plan to Deploy a Mobile-Phone Station on Takeshima Rocks of 1 September 2005 at www.cellular-news.com/story/13755.php. On the crisis caused by South Korea's plan in late 2005 to name in Korean the seabed features around Takeshima (having Japanese names since 1978) at the International Hydrographic Office's Conference to be held in Germany in June 2006 and by designating \$ 36 million for improving facilities on the Rocks and researching the area, as responded by Japan's announcement on 4 April of undertaking maritime survey in the disputed area, and as followed by Japan/Korea Talks in Seoul on 1-2 May, see 25 April 2006 at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4941190.stm>; 27 April at <http://yaleglobal.yale.edu/display.article?id=7320>; 1 May at http://english.people.com.cn/200605/01/eng20060501_262526.html; UNSG Kofi Annan's Visit to South Korea, 14-16 May at www.un.org/News/Press/docs/2006/sgt2490.doc.htm and Japan, 16-19 May 2006 at www.un.org/News/Press/docs/2006/sgt2491.doc.htm; South Korea/Japan JDZ Proposal of 26 May at www.rigzone.com/news/article.asp?a_id=32542 and Inconclusive Talks of 5 September 2006, *id.* = 35854.

¹⁴⁷South Korea Steps Up Pressure over Dokdo of 16 July 2008 at www.bernama.com/bernama/v3/news_lite.php?id=346531; Seoul to Ask Russia to Relabel Sea of Japan on Maps of 16 July 2008 at <http://en.rian.ru/world/20080716/114112519.html>; Island Row Hits Japanese Condoms of 17/18 July 2008 at <http://news.bbc.co.uk/2/hi/asia-pacific/7511065.stm> & <http://english.aljazeera.net/news/asia-pacific/2008/07/20087183593714312.html>; Seoul Lays Out Plans to Protect Dokdo Territory of 21/22 July 2008 at www.asianewsnet.net/news.php?id=363&sec=1, www.todayonline.com/articles/266409.asp & www.asianewsnet.net/news.php?id=384&sec=1; 1 August 2008 at www.rigzone.com/news/article.asp?a_id=64989 and Map at www.rigzone.com/news/image_detail.asp?img_id=5185&a_id=64989; South Korea to Build Solar Power Unit on Dokdo of 7 August 2008 at www.planetark.org/dailynewsstory.cfm/newsid/49702/story.htm; South Korea/Japan Territorial Dispute Reemerges of 21 July 2011 at <http://www.voanews.com/english/news/asia/Japan-South-Korea-Territorial-Dispute-Flaring-Again-125940114.html> and 4 August 2011 at <http://articles.latimes.com/2011/aug/04/world/la-fg-south-korea-island-20110804> & http://en.wikipedia.org/wiki/Liancourt_Rocks.

The Republic of Korea has also been involved into a dispute with China over submerged Ieodo/Suyan (Socotra) Rock 4.6 metres below sea level at low-tide, which each of these states claims to be situated in its own 200-mile EEZ, not yet delimited with another; Socotra Rock lies 149 kilometres (93 miles) southwest of Marado, Korea and 245 kilometres (153 miles) northeast of Haijiao Island, China (and approximately 275 kilometres or 172 miles from the nearest Japanese island of Torishima), it was discovered in 1900 by the British merchant vessel *Socotra*, it possesses the Ieodo Ocean Research Station built in 1995-2001 by South Korea together with a helipad despite China's objections and it was officially designated as Ieodo by the Korea Institute of Geology on 26 January 2001, followed by China's Foreign Ministry claiming these Korean unilateral activities to be illegal.¹⁴⁸

China's 2009 Preliminary Partial (East China Sea) Submission provided four profile lines (each of which includes six points from A to F) extending seawards from selected basepoints and it asserted that the outer limits of China's CS in the East China Sea are located along the axis of the Okinawa Trough. However, as these areas are within 200-mile zone of neighbouring Japan, para.11 of China's Preliminary Submission specified in accordance with UNCLOS Articles 74/83 that:

11. Following its consistent position, China will, through peaceful negotiation, delimit the continental shelf with States with opposite or adjacent coasts by agreement on the basis of international law and the equitable principles.¹⁴⁹

Japan's Note Verbale of 23 July 2009 was prompt in reserving its right to make additional comments on China's position in the future and in meanwhile stressing that:

It is indisputable that the establishment of the outer limits of the continental shelf beyond 200 miles in an area comprising less than 400 miles and subject to the delimitation of the continental shelf between the States concerned cannot be accomplished under the provisions of the UNCLOS.

This passage implies that were China to proceed with Partial (East China Sea) Submission, Japan would request the CLCS to refrain from making Recommendations on such Submission.¹⁵⁰

It is noteworthy that the discoveries of oil deposits in 1970 and Chunxiao gas field in 2004 have led China and Taiwan to contesting Japan's sovereignty over eight tiny, uninhabited Senkaku/Diaoyu (Fishing or Pinnacle) Islands (of 2.5 square miles in total), including five larger islands - Uotsuri, Kuba, Minami Kojima, Kita Kojima and Taisho, of which only Outsuri is larger than one square mile and possesses the lighthouse since 1978,

¹⁴⁸Socotra Rock at http://en.wikipedia.org/wiki/Socotra_Rock; Choon-ho Park, "The Changeable Legal Status of Islands and 'Non-Islands' in the New Law of the Sea: Some Instances in the Asia-Pacific Region", in: D.D. Caron and H.N. Scheiber (eds.), *Bringing New Law to Ocean Waters* (2004) 483, 489.

¹⁴⁹China's 2009 Preliminary Partial (East China Sea) Submission and Japan's Note Verbale of 23 July 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/chn2009preliminaryinformation_english.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 566-567; *supra* note 3.

¹⁵⁰*Id.*, Japan's Note Verbale of 23 July 2009 on China's 2009 Preliminary Partial (East China Sea) Submission.

with all those islands lying some 100 miles east north-east of Taiwan, 200 miles east of the Chinese mainland and 170 miles west of Okinawa and being separated from the Japanese Ryukyu Islands by the Okinawa Trough, and with waters around Senkakus/Diaoyus being maintained as Free Fishing Zones under the 1997 China/Japan Fisheries Agreement and being covered by the 2008 China/Japan JDZ Agreement (Principled Consensus).¹⁵¹ China's 1992 Law on the Territorial Sea and the Contiguous Zone (Article 2) and its 1996

¹⁵¹The land areas of all Senkaku/Diaoyu features are as follows: Uotsuri - 1 square mile; Kuba - 0.4 square mile; Minami Kojima - 0.18 square mile; Kita Kojima - 0.12 square mile; Taisho - 0.06 square mile; and three rocks: Okinokitawa - 0.005 square mile; Okinominamiwa - 0.002 square mile; Tobise - 0.00002 square mile; American Defense Commitments and Asian Island Disputes (1998) at www.boundaries.com/US-Asia.htm; Japanese MFA at www.mofa.go.jp/region/asia-pacific/senkaku/senkaku.html; Senkaku/Diaoyu Islands at www.globalsecurity.org/military/world/war/senkaku.htm, www.wikinfo.org/wiki.php?title=Senkaku_Islands & www.american.edu/TED/ice/diaoyu.htm; S. Wei Su, "The Tiaoyu/Senkaku Islands" (2005) 36 ODIL 45-61; E. Denk, "Interpreting a Geographical Expression in the 1895 Shimonoseki Treaty and the Senkaku/Diaoyu Islands Dispute" (2005) 20 IJMCL 97-116 at www.brill.nl/estu; Giuifang (Julia) Xue, "Bilateral Fisheries Agreements in the China Seas" (2005) 36 ODIL 363-374, noting at 367-369, that to the north of Free Fishing Zones around disputed Senkakus/Diaoyus, the 1997 China/Japan Fisheries Agreement established the Provisional Measures Zone (PMZ) covering overlapping 200-mile EEZs of the parties. On escalation of the dispute, including over Chunxiao gas field in the East China Sea and JDZ proposals, see 9 October 2003 at http://english.peopledaily.com.cn/200311/13/eng20031113_128219.shtml; 23 March 2004 at <http://news.bbc.co.uk/2/hi/asia-pacific/3567787.stm>; China MFA Statement of 19 January 2005 at www.fmprc.gov.cn/eng/xwfw/s2510/t180397.htm. On tension caused by Japanese Coast Guard's taking over the lighthouse on Uotsuri Island, see, Japan Severly Violates Chinese Sovereignty of 12 February 2005 at www.fmprc.gov.cn/eng/zxxx/t183696.htm & http://english.peopledaily.com.cn/200502/12/eng20050212_173523.html. On the continuing Chunxiao field controversy, see Asian Giants Keep Up War of Words of 14 April 2005 at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4443307.stm>; 27 May at <http://china.org.cn/english/2005/May/130110.htm>; 15 July 2005 at www.fmprc.gov.cn/eng/zxxx/t203976.htm & <http://news.bbc.co.uk/1/hi/world/asia-pacific/4681823.stm>; 1 December 2005 at www.rigzone.com/news/article.asp?a_id=27416; China/Japan JDZ Talks of 9 January 2006 at www.rigzone.com/news/article.asp?a_id=28388; 7 March 2006 at www.rigzone.com/news/article.asp?a_id=30055; China Doesn't Accept Japan's Equidistance of 21 April 2006 at www.rigzone.com/news/article.asp?a_id=31470 & <http://news.bbc.co.uk/2/hi/asia-pacific/4915178.stm>; UNSG Kofi Annan's Visit to South Korea, 14-16 May at www.un.org/News/Press/docs/2006/sgt2490.doc.htm and Japan, 16-19 May 2006 at www.un.org/News/Press/docs/2006/sgt2491.doc.htm, China, 19-23 May, Vietnam, 23-24 May 2006 at www.un.org/News/Press/docs/2006/sgt2492.doc.htm & www.un.org/News/Press/docs/2006/sgt2493.doc.htm; China/Japan Talks of 19 February 2007 at www.rigzone.com/news/article.asp?a_id=41463 & boundaries in Senkaku area at www.rigzone.com/news/image_detail.asp?img_id=4221&a_id=41463; China/Japan Chunxiao Gas JDZ of 18-19 June 2008 at <http://en.epochtimes.com/news/8-6-27/72597.html>, www.chinadaily.com.cn/bizchina/2008-06/25/content_6794064.htm, www.rigzone.com/news/article.asp?a_id=63346 & boundaries in Senkaku Area at www.rigzone.com/news/image_detail.asp?img_id=4990&a_id=63346, <http://news.bbc.co.uk/2/hi/asia-pacific/7463492.stm>, <http://news.bbc.co.uk/2/hi/business/7461043.stm> & www.chinadaily.com.cn/bizchina/2008-06/19/content_6775982.htm; Senkakus Dispute Shelved, Yet Again of 17 December 2008 at <http://atimes.com/atimes/China/JL17Ad01.html>; China Urges Japan of 6 January 2009 at <http://english.people.com.cn/90001/90776/90883/6568233.html>; Xinjun Zhang, Why the 2008 Sino-Japanese Consensus on the East China Sea Has Stalled?, 42 ODIL 53-65 (2011); Japan Builds Up Forces Near Disputed Senkaku Islands of 4 October 2011 at <http://blogs.voanews.com/breaking-news/2011/10/05/japan-builds-up-forces-near-disputed-island-chain/>; China Protests Japan's Visit to Senkakus/Diaoyus of 3 January 2012 at <http://www.fmprc.gov.cn/eng/xwfw/s2510/t892708.htm>, <http://www.voanews.com/english/news/asia/Japanese-Lawmakers-Visit-Island-Also-Claimed-by-China-136578498.html> & <http://www.bbc.co.uk/news/world-asia-16390899>.

Declaration upon UNCLOS' ratification expressly reaffirmed China's sovereignty over the disputed Senkaku/Diaoyu, Penghu, Pratas/Dongsha, Paracel/Xisha and Spratly/Nansha Islands; in the area of Senkakus/Diaoyus (enclosed by normal baselines of both Japan and Taiwan), which involves the pending China/Japan EEZ/CS delimitation, the straight baselines of both China along this part of its mainland and Japan around its Ryukyu (Nansei) Islands do not conform with the UNCLOS' "deeply indented" coastline and "fringe of islands" requirements.¹⁵² Upon deposition by Japan on 14 March 2008 of its charts with the UN Secretary-General, China protested on 14 May 2008 Japan's chart marking Diaoyu Islands as Senkaku Shoto and their TS as violating the sovereignty of China and being null and void, with these arguments having been rejected in Japan's Reply of 20 June 2008, which asserted that Senkakus are "inherent territories of Japan" and that Japan's chart in question is legitimate.¹⁵³ For these reasons, Japan's Note Verbale of 23 July 2009 also protested against China's 2009 Preliminary Partial (East China Sea) Submission to the CLCS quoted before.¹⁵⁴ In 2010, Japan/China ties have grown strained over a September 8 collision between Chinese fishing boat and two Japanese Coast Guard vessels near the disputed Senkakus; Japan released the 14-member crew and thereafter Chinese captain from Japanese custody, but has

¹⁵²China's 1992 Law on the TS/CZ and 1996 TS Baseline Declaration, in *UN Law of the Sea Bulletin* 24 (1992 No.21), 37 (1996 No.32) & *Limits in the Seas No.117 - China* (1996), at 7 (also referring at 8, to China's straight baselines around the disputed Paracel/Xisha Islands) and Japan's 1977 Law No.30 on the TS/CZ as Amended by the 1996 Law No.73, in *Limits in the Seas No.120 - Japan* (1998), at 7 (Groups 6-8) at <http://www.state.gov/e/oes/ocns/opa/c16065.htm>, both quoted *supra* note 145; Japan's Law, also in *UN Law of the Sea Bulletin* 78 (1997 No.35) and as Amended by Cabinet Order No.434 of 2001, in *UN Law of the Sea Bulletin* 71 (2008 No.66); Ryukyu Islands at <http://en.wikipedia.org/wiki/Ryukyu>; *Limits in the Seas No.127 - Taiwan* at 13-14 (2005) at <http://www.state.gov/e/oes/ocns/opa/c16065.htm>; emphasis on equitable principles in China's 1996 Declaration upon the UNCLOS' Ratification, *UN Law of the Sea Bulletin* 8 (1996 No.31) and on equidistance in Japan's 1996 EEZ/CS Acts No.140 (Articles 1-2), *id.* 36 (1997 No.33) and No.74 (Articles 1-2), *id.* 94 (1997 No.35) at www.un.org/Depts/los/; Z. Keyuan, "China's Exclusive Economic Zone and Continental Shelf"(2001) 25 *Marine Policy* 71, 77-81, noting at 74, that unusual reaffirmation in China's 1998 EEZ/CS Act of its "historic rights" (Article 14), *UN Law of the Sea Bulletin* 28 (1998 No.38) is related to China's territorial and maritime claims in the South China Sea based upon the controversial U-shaped line drawn in the Chinese map published by the Chinese Government in 1947 with a view to indicating the ownership of the islands within it, although the term "historic rights" (which may carry a broader meaning than, and even include, "historic waters") goes beyond this; A. Oude Elferink, "The Islands in the South China Sea"(2001) 32 *ODIL* 169-190; J.M. Van Dyke, "The Republic of Korea's Maritime Boundaries"(2003) 18 *IJML* 517-519, 529 at www.brill.nl/estu, noting protests of Asian states against both China's and Japan's excessive straight baselines; China/Japan boundary calculations by V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 436-441 and Figure 18.5 at 627 at <http://www.brill.nl/maritime-political-boundaries-world>, made - like in all other cases covered by their book - without regard to the effect of excessive straight baselines drawn by both states in this area; Sam Bateman, Ian Storey & Carl Ungerer, "Making Mischief: The Return of the South China Sea Dispute" of 16 December 2010, pp.10-16 at http://www.aspi.org.au/publications/publication_details.aspx?ContentID=275&pubtype=-1.

¹⁵³Notes Verbales of China of 14 May 2008 and of Japan of 20 June 2008, in *UN LOSIC* 17-18 (2008 No.28) at www.un.org/Depts/los/.

¹⁵⁴See *supra* notes 149-150.

rejected China's demand for an apology and compensation for allegedly unlawful holding of a Chinese fishing boat captain.¹⁵⁵

Special Case of Okinotorishima - Japan, China, Republic of Korea

East of the Japanese Ryukyu Island chain and the Senkakus/Diaoyus, about 1,080 miles south of Tokyo and midway between Taiwan and Guam (hosting important U.S. military base) lie four - some 1,280 meters apart - barren Okinotorishima (Offshore Bird) Islets, which are located in a coral reef (of 3 square miles) and the low-tide nature of which (0.1 to 0.2 meters above high-tide) was as of 2005 protected by Japan at the expense of US \$ 600 million, including 280 million spent on encasing these features in (25 metres high) concrete, covering one of them with a \$ 50 million titanium net, installing radar and drawing plans to build a \$ 1 million lighthouse and an Ocean Thermal Energy Conversion (OTEC) system, with a view to countering China's position that Okinotorishima is, under Article 121(3), not entitled to the 163,000 square miles of its EEZ claimed by Japan.¹⁵⁶

Japan's position that Okinotorishima rocks are a full-fledged island under UNCLOS Article 121(1)-(2) was importantly reinforced in its 2008 Submission to the CLCS, where of the six regions in which Japan claims outer continental shelf beyond 200 miles, Okinotorishima Island was included within the Southern Kyushu-Palau Ridge (KPR) Region; this took place subject to assurance of Palau's Note Verbale of 15 June 2009 that it had no objection to the CLCS considering and making Recommendations on this part of Japan's

¹⁵⁵China/Japan Tension Grows After Shipping Collision Near Senkakus of 13 September 2010 at <http://www.time.com/time/world/article/0,8599,2017768,00.html>; 17 September 2010 at <http://www.telegraph.co.uk/news/worldnews/asia/japan/8008102/Tensions-between-China-and-Japan-rise-over-disputed-gas-field.html>; Japan Rejects China's Demand for Apology of 25 September 2010 at <http://www.voanews.com/english/news/Japan-Rejects-Chinas-Demand-for-Apology-103780014.html>; China's Statement on Diaoyu Islands of 4 July 2011 at <http://www.fmprc.gov.cn/eng/xwfw/s2510/t836628.htm>. See also Japan's Protest Against Hampering by China of Marine Scientific Research in Japanese EEZ Around Senkakus of 20 February 2012 at <http://www.bbc.co.uk/news/world-asia-17093549>.

¹⁵⁶Note that Okinotorishima provides a single instance of reliance on Article 121(3) by China without these potential rocks being involved in maritime boundary delimitation with that state. See Okinotorishima at <http://en.wikipedia.org/wiki/Okinotorishima>, listing: Higashikojima (Eastern Islet of 1.6 square meters), Kitakojima (Northern Islet of 6.4 square meters) and Minamikojima (artificial Southern Islet) and noting that the fourth rock is even smaller; A.L. Silverstein, "Okinotorishima: Artificial Preservation of a Speck of Sovereignty" (1990) 16 *Brooklyn Journal of International Law* 409-431; Choon-ho Park, "The Changeable Legal Status of Islands and Non-Islands" (2004), *supra* note 148, at 488, noting that given its mid-oceanic location, Okinotorishima would entitle Japan to claim an area of 430,000 square kilometres, which is larger than Japan's own land territory of 370,000 square kilometres; N. Onishi, 2 Rocks in Hard Place for Japan and China, *International Herald Tribune* of 11 July 2005 at www.iht.com/articles/2005/07/10/news/japan.php, noting placing on Okinotorishima in June 2005 of an official address plaque "1 Okinotori Island, Ogasawara Village, Tokyo"; Chinese Warships of 11 September 2005 at www.iht.com/articles/2005/09/11/news/rivals.php, emphasizing serious threat of China-Taiwan unification to Japan due to most of Japan's oil being shipped through 2 sealanes - one directly south of Taiwan and another further south; Planning an OTEC System Around Okinotorishima of 5 January 2006 at www.yomiuri.co.jp/dy/national/20060105TDY01003.htm.

Submission, without prejudice to delimitation of Japan/Palau outer CS in the future.¹⁵⁷ Prior to consent given by Palau, as the only (mini-)state involved in maritime delimitation in Okinotorishima area, to Japan's Submission, it was contested by China's Notes Verbales of 6 February 2009 and 3 August 2011 on the ground that "the so-called Oki-no-Tori Shima Island is in fact a rock as referred to in Article 121(3) of the UNCLOS" and that its EEZ/CS would illegally encroach upon the extent of the International Sea-Bed Area which is the "Common Heritage of Mankind" and which all UNCLOS States Parties are obliged to respect.¹⁵⁸ As China found inclusion of "the rock of Oki-no-Tori" [referred to by China without using "shima" - "island"] to be incompatible with UNCLOS Article 121(3), it requested the CLCS not to take any action on those CS portions both within and beyond 200 miles which are measured according to Japan's Submission from the rock of Oki-no-Tori.¹⁵⁹ Notes Verbales of South Korea of 27 February 2009 and 11 August 2011 stated that Okinotorishima is an Article 121(3) rock, but that its consideration does not fall within the CLCS mandate.¹⁶⁰ Palau's 2009 Submission to the CLCS reiterated that it did not prejudice the future Palau/Japan Outer CS Beyond 200 Miles Delimitation Agreement and likewise any such future Agreements between Palau/Indonesia, Palau/Philippines and Palau/Micronesia; in the part concerning Palau/Japan boundary, Palau's 2009 Submission stressed that:

¹⁵⁷For Japan's 2008 Submission - Section 4: Relevant Maritime Delimitations; Southern Kyushu-Palau Ridge (KPR) Region - Okinotorishima Island, at 4, 6 [Map - KPR], 8 referring to Palau's assurance [as confirmed by Palau's Note Verbale of 15 June 2009], and KPR Region at 9-11 and China's Note Verbale of 6 February 2009 contesting inclusion of Okinotorishima as Article 121(3) rock in Japan's Submission, as well as for Note Verbale of the United States of 22 December 2008 stating that in areas from Haha Shima and Minami-Tori Shima Islands, the CLCS Recommendations on Japan's Submission will be without prejudice to the U.S. outer CS limit and Japan/U.S. Northern Marianas boundary delimitation [*infra* notes 218-219], and for Note Verbale of South Korea of 27 February 2009, stating that Okinotorishima is an Article 121(3) rock, but that its consideration does not fall within the CLCS mandate, and for Notes Verbales of China of 3 August 2011 and South Korea of 11 August 2011, reaffirming their requests that the CLCS takes no action on the part of CLCS Draft Recommendations related to Okinotorishima, see www.un.org/Depts/los/clcs_new/submissions_files/submission_jpn.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; Statements of Japan to the 63rd UNGA of 4 December 2008 at www.un.org/News/Press/docs//2008/ga10793.doc.htm; and to the SPLOS of 25 June 2009, *infra*; Statements by the CLCS Chairman, UN Docs CLCS/64 (1 October 2009), CLCS/66 (30 April 2010), CLCS/70 (11 May 2011), reiterating that since the CLCS had no role on matters relating to the legal interpretation of UNCLOS Article 121, the CLCS instructed its Subcommittee to proceed with the consideration of the full Submission of Japan, and that the CLCS shall, however, not take action on Okinotorishima-related part of Japan's Submission until the CLCS decides to do so in August 2011, and UN Doc. CLCS/72 (16 September 2011), deferring further in paras 11-15 consideration of Draft Recommendations and also deferring further in paras 37-40 CLCS' seeking advice from UN Legal Counsel Patricia O'Brien on matters of interpretation by the CLCS of UNCLOS provisions other than Article 76, e.g., rocks principle of Article 121(3) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 551-554 and Figure 29.4 [Japan] & 560-561 [Palau]; *supra* note 3.

¹⁵⁸*Id.*, China's Notes Verbales on Japan's 2008 Submission of 6 February 2009 and 3 August 2011 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_jpn.htm, which did not raise the issue of artificial adjustment of Okinotorishima's low-tide nature.

¹⁵⁹*Id.* See also *infra* note 219, referring to speculations that Chinese vessels have been mapping the seabed near Okinotorishima Islands over which American warships might pass on their way from the U.S. military base at Guam to Taiwan.

¹⁶⁰*Id.*, Republic of Korea's Notes Verbales on Japan's 2008 Submission of 27 February 2009 and 11 August 2011 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_jpn.htm.

5.5 The extension of Palau's continental shelf in the North Area along the Palau-Kyushu Ridge, where potential overlap exists, is the subject of consultations between Palau and Japan. Palau's Submission of, and the Commission's consideration of and recommendation on, this area is without prejudice to the question of the delimitation of the continental shelf beyond 200 miles between Palau and Japan. The Government of Japan has indicated to the Government of the Republic of Palau that it has no objection to the Commission considering and making Recommendations on this part of the Submission, without prejudice to such delimitation.¹⁶¹

China's attempt to include Article 121(3) into Agenda of the UNCLOS States Parties (SPLOS) failed, as both SPLOS and CLCS were not considered to be appropriate fora for determining the content of this provision.¹⁶² To reinforce its claim, Japan submitted on 19 January 2010 a bill to the Congress proposing the protection of the coastlines of remote islands, including Okinotorishima, as again protested by China.¹⁶³ Notwithstanding its protests against Japan, on 26 December 2009 China itself enacted its Island Protection Law and in February 2010 China completed construction of 13 permanent facilities - stone tablets and lighthouses - on islands, rocks and reefs in the East and South China Seas with a view to clarifying its territorial waters' baselines in these oil- and fish-rich areas.¹⁶⁴ And notwithstanding its protests against Japan with respect to Okinotorishima, the Republic of Korea has intensified efforts to enhance habitability of Takeshima/Tok-do (Liancourt) Rocks referred to above and to rechannel them into full islands category.¹⁶⁵ Similar efforts have been intensified during preparation of Partial Submission to the CLCS by Indonesia in regard of 88 small islets (of 0.02 up to 200 square kilometers) straddling boundaries that Indonesia shares with 10 states (Australia, India, Malaysia, Palau, Papua New Guinea, the Philippines, Singapore, Thailand, Timor Leste and Vietnam) and being subjected to transmigration

¹⁶¹Palau's 2009 Submission to the CLCS, Section 5: Outstanding Maritime Delimitations at p.8, Note Verbale of Philippines of 4 August 2009 and Note Verbale of Palau of 22 July 2010 at www.un.org/Depts/los/clcs_new/submissions_files/submission_plw_41_2009.htm; Statement by the CLCS Chairman, UN Doc. CLCS/68 (17 September 2010) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; quoted *infra* notes 182, 218 & 221; and *supra* note 3. See also Palau Contemplates Seeking ICJ Advisory Opinion on Environmental Damage [on responsibilities of states under international law to ensure that activities carried out under their jurisdiction or control that emit greenhouse gases (GHGs) do not damage other states] of 22 September 2011 at <http://www.un.org/apps/news/story.asp?NewsID=39710&Cr=pacific+island&Cr1>, <http://gadebate.un.org/> & <http://www.unmultimedia.org/photo/gallery.jsp?query=Palau>; and 28 September 2011 at <http://www.nytimes.com/gwire/2011/09/28/28greenwire-island-nation-girds-for-legal-battle-against-i-60949.html>; UN Press Conference on Request for ICJ Advisory Opinion on Climate Change of 3 February 2012 at http://www.un.org/News/briefings/docs/2012/120203_ICJ.doc.htm.

¹⁶²UN Docs SPLOS/196 (China's Note Verbale - 22 May 2009) and SPLOS/L.60 (Ivory Coast and Pakistan - 22 May 2009); SPLOS, SEA/1919 of 25 June 2009, Statements of China, Ivory Coast, Japan and Romania, stating that consideration of UNCLOS Article 121(3) falls beyond the mandates of CLCS and SPLOS, at 3-4 at www.un.org/News/Press/docs//2009/sea1919.doc.htm; Statement by the CLCS Chairman, UN Doc. CLCS/64 (1 October 2009) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/.

¹⁶³China Dismisses Japan's Claim to Okinotorishima of 20 January 2010 at <http://english.peopledaily.com.cn/90001/90776/90883/6873407.html>.

¹⁶⁴On China's practice, see *infra* notes 187-188.

¹⁶⁵Ironically, in its dispute with Japan over Takeshima/Tok-do (Liancourt) Rocks, Republic of Korea maintains that these are Article 121(3) rocks as well, *supra* notes 145-147.

program which aims at populating these islands and rocks and thereby providing them with entitlement to the EEZ/continental shelf.¹⁶⁶

Meanwhile, China's and the Republic of Korea's Notes Verbales of 6 and 27 February 2009 referred to above have not prevented the CLCS from instructing a Subcommission, which was set up in October 2009 to deal with Japan's 2008 Submission, to also consider this Submission's part related to Okinotorishima. The fact that the CLCS decided at the same time in 2009 and 2011 that it would not take action on the Recommendations of this Subcommission in respect of Okinotorishima related part until a later point, testifies to the CLCS' hesitation whether a dispute over UNCLOS Article 121(3) is a dispute in the sense of Annex I of the CLCS Rules of Procedure?; if the CLCS believed that Okinotorishima is an Annex I dispute, China's and Republic of Korea's Notes Verbales of 2009 and 2011 would have directly prevented the CLCS from considering the Okinotorishima-related part of Japan's 2008 Submission.¹⁶⁷

What will the CLCS ultimately do? Will the CLCS consider Article 121(3) dispute - which in the case of Okinotorishima uniquely does not involve any delimitation dispute with protesting states - to fall within the ambit of UNCLOS Article 76(10) and Article 9 of its Annex II as well as Rule 46 and Annex I of the CLCS Rules of Procedure and will the CLCS, therefore, given China's and Korea's Notes Verbales, reject its Subcommission's Recommendations on the first Southern Kyushu-Palau Ridge (KPR) Region of Japan's 2008 Submission where Okinotorishima is located?

Or will the CLCS consider Article 121(3) dispute - especially because Okinotorishima does not uniquely involve any delimitation dispute with protesting states - as not falling within the ambit of all "savings provisions" specified above and will the CLCS, therefore, disregard China's and Korea's Notes Verbales and adopt Recommendations on the first Southern Kyushu-Palau Ridge (KPR) Region of Japan's 2008 Submission where Okinotorishima is located?

Does the phrase of Rule 46 and Annex I saying that: "In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States or in other cases of unresolved land or maritime disputes", especially its part: "in other cases of unresolved land or maritime disputes" cover or does not it cover disputes other than maritime/land delimitations and territorial questions, such as is dispute over status of Okinotorishima as Article 121(3) rock? The language of Rule 46 and Annex I of the CLCS Rules of Procedure seems sufficiently broad to regard Okinotorishima, despite the fact that it uniquely does not involve any delimitation dispute, to belong to "other cases of unresolved land or maritime disputes". If this interpretation was accepted, China's and Korea's Notes Verbales of 2009 and 2011 would result in non-adoption by the CLCS of Recommendations on the first Southern Kyushu-Palau Ridge (KPR) Region of Japan's 2008 Submission where Okinotorishima is located.

However, there is a strong argument that both the wording and state practice in the CLCS with respect to Rule 46 and Annex I of the CLCS Rules of Procedure reinforce the fundamental principles of UNCLOS Article 76(10) which is clearly confined to "the

¹⁶⁶On the 2008 Indonesia's Partial (North West of Sumatra) Submission, see *infra* note 181. On a similar practice of India, see *infra* notes 234-235.

¹⁶⁷UN Docs CLCS/62, para.54 (20 April 2009), CLCS/64, paras 23-26 (1 October 2009) and CLCS/72, paras 11-15 (16 September 2011) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; as analyzed by A. Oude Elferink, "The Continental Shelf in the Polar Regions", *XL Netherlands Yearbook of International Law* (NYIL) 121-181, at 147-149 (2009). See also main text accompanying *supra* notes 16-23.

question of delimitation of the continental shelf” and Article 9 of UNCLOS Annex II which is clearly confined to “matters relating to delimitation of boundaries”. Therefore, since Okinotorishima uniquely [amongst numerous actual and potential Article 121(3) rocks referred to before] does not involve any maritime delimitation other than with Palau, which gave its prior consent to Japan’s 2008 Submission, but since it does involve Japan’s dispute with China and Republic of Korea over Okinotorishima legal status as Article 121(3) rock, the CLCS would be justified in considering this dispute as not covered by UNCLOS Article 76(10) and other “saving provisions” analyzed in this article before and it would be justified in disregarding China’s and Republic of Korea’s objections and in adopting Recommendations on the first Southern Kyushu-Palau Ridge (KPR) Region of Japan’s 2008 Submission where Okinotorishima is located, without prejudice to the future Japan/Palau delimitation. This solution would seem to be especially appropriate given that the three states concerned are also involved in contradicting claims with respect to potential Article 121(3) rocks of Takeshima/Tok-do (Liancourt), Socotra and Senkaku/Diaoyu Islands discussed earlier.¹⁶⁸

Alternatively, as Alex Oude Elferink suggested, the CLCS could not include the outer limit line off Okinotorishima in its Recommendations based on reasons similar to those that were apparent in the CLCS’ rejection in the case of Australia’s Sub-Antarctic Macquarie, Heard and McDonald Islands (covered by Kerguelen Plateau Region) of two points (732a and 960a) located on the 200-mile limit of Australian Antarctic Territory (AAT); this rejection occurred with a view to avoiding by the CLCS to expand its work to issues unrelated to UNCLOS Article 76 and Annex II and not to prejudice any “matters related to delimitation between states or application of other parts of the UNCLOS or any other treaties”.¹⁶⁹ As Okinotorishima does not involve any maritime delimitation dispute, the CLCS rejection would need to be based on concern with not prejudicing “application of other parts of the UNCLOS“ (in this case Article 121(3)).

Were the Recommendations prepared by Subcommittee on the Okinotorishima related part of Japan’s 2008 Submission to be - for this reason or another - not adopted by the CLCS, the question would arise if the CLCS could - *proprio motu* or on Japan’s request - seek a legal expert opinion on Okinotorishima’s status as Article 121(1)-(2) island and not as a potential UNCLOS Article 121(3) rock, in pursuance of Rule 57 on Advice by Specialists of the CLCS Rules of Procedure which has been relied by Britain’s Note Verbale of 11 January 2011 in seeking expert legal advice on its 2008 Partial (Ascension)

¹⁶⁸China’s and Republic of Korea’s 2009 and 2011 Notes Verbales on Japan’s 2008 Submission, *supra* notes 158-160; and discussion of disputes over Takeshima/Tok-do (Liancourt), Socotra and Senkaku/Diaoyu Islands in section on Northeast and East Asia - China, Japan, Republic of Korea in this article *supra*.

¹⁶⁹A. Oude Elferink, “The Continental Shelf in the Polar Regions” (2009) XL NYIL 149, 172-175, *supra* note 167 and *infra* notes 310-315; D.R. Rothwell, “Issues and Strategies for Outer Continental Shelf Claims” (2008) 23 IJMC 207-209 at www.brill.nl/estu; A. Serdy, “Towards Certainty of Seabed Jurisdiction Beyond 200 Miles from the TS Baseline: Australia’s Submission to the CLCS”(2005) 36 ODIL 201-217; Australia’s 2004 Submission, of which 3 (out of 10 in total) regions - AAT, Kerguelen Plateau and Three Kings Ridge - involve outstanding delimitations, and 2008 CLCS Recommendations, paras 5 & 53 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_austr.htm & http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; www.ga.gov.au/news/index.jsp#clcs & www.ga.gov.au/image_cache/GA11214.pdf; Australia’s Maritime Jurisdiction Map Series at <http://www.ga.gov.au/amsis/index.jsp> & <http://www.ga.gov.au/marine/jurisdiction/map-series.html>; http://en.wikipedia.org/wiki/Macquarie_Island, <http://whc.unesco.org/en/list/629>, http://en.wikipedia.org/wiki/Heard_Island_and_McDonald_Islands, <http://whc.unesco.org/en/list/577>; Australia’s Oil and Gas Maps at www.rigzone.com/news/image_results.asp?r_id=4; *supra* note 3.

Submission which was rejected by the CLCS?¹⁷⁰ Usefulness of such legal expert advice could be illustrated by uncertainties surrounding the 2010 CLCS Recommendations on the UK's Partial (Ascension) Submission, and in the context of rejection in the 2008 CLCS Recommendations (Australia) of fixed points 732a and 960a of Heard and McDonald Islands referred to above, it could be assumed that expert legal advice could clarify puzzling acceptance in these 2008 Recommendations of points 665 to 732 of the outer CS of these Islands despite the fact that these points are also within the outer limit of the CS beyond 200 miles of the AAT continental shelf submitted by Australia.¹⁷¹ However, given interpretative ambiguities inherent in Article 121(3), which are also apparent in conflicting claims of Japan, China and Republic of Korea over Takeshima/Tok-do (Liancourt) Rocks, Socotra Rock and Senkaku/Diaoyu Islands, any expert legal advice pursuant to the CLCS Rules of Procedure (Rule 57) in the particular case of Okinotorishima would not seem to be feasible.¹⁷² It is, therefore, to be hoped that the CLCS will disregard China's and Korea's Notes Verbales due to the fact that the issue of Article 121(3) rocks not involving delimitation disputes falls outside the scope of disputes under CLCS Annex I and that it will adopt its Subcommission's Recommendations on Okinotorishima related part (the first Southern Kyushu-Palau Ridge (KPR) Region) of Japan's Submission without prejudice - pursuant to UNCLOS Article 76(10) - to Japan/Palau delimitation referred to above.¹⁷³

Southeast Asia - China, Malaysia, Vietnam, Brunei, Indonesia, Philippines

The fact that in para.10 of its 2009 Preliminary Partial (East China Sea) Submission:

10. China reserves its right to make Submissions on the outer limits of the continental shelf that extends beyond 200 miles in the East China Sea and *in other sea areas* (emphasis added),

can be construed as presaging another China's Partial (South China Sea) Submission.¹⁷⁴ Such a Submission, however, seems for the time being to be unlikely given China's notorious U-shaped line claim with a view to indicating its ownership of Spratly/Nansha (Truong Sa/Kalayaan), Paracel/Xisha (Hoang Sa) and Scarborough/Huangyan Dao within this U-line and given that South China Sea disputes are

¹⁷⁰On UK's 2008 Partial (Ascension) Submission, CLCS 2010 Recommendations and UK's 2011 Note Verbale, see *supra* notes 121-122.

¹⁷¹A. Oude Elferink, "The Continental Shelf in the Polar Regions" (2009) XL NYIL 174, *supra* note 167. See also Legal Opinion of UN Under-Secretary-General for Legal Affairs Nicolas Michel [<http://untreaty.un.org/ola>], CLCS/46 (7 September 2005) at www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* notes 3 and 110.

¹⁷²See our comments on UNCLOS Article 121(3) and suggested customary law Article 121(4) in the main text accompanying *supra* notes 10-13 and 162. On disputes over Takeshima/Tok-do (Liancourt) Rocks, Socotra Rock and Senkaku/Diaoyu Islands, see section on Northeast and East Asia - China, Japan, Republic of Korea *supra*. On legislation of both China and Japan reinforcing their claims to islands, rocks and reefs, see *supra* notes 163-166.

¹⁷³See main text accompanying *supra* notes 167-168.

¹⁷⁴China's 2009 Preliminary Partial (East China Sea) Submission, para.10 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/chn2009preliminaryinformation_english.pdf, *supra*.

long-standing, multi-state, and involve valuable resources in addition to other strategic considerations.¹⁷⁵

The largest of Spratly/Nansha (Truong Sa/Kalayaan) Islands is a sandy cay, Itu Aba/Taiping Island which is elliptical in shape of 1.4 kilometres in length and 0.4 kilometres in width (and average altitude of 3.8 meters) and with a land area of only 489,600 square meters, forms part of the Tizard Bank/Zheng He Reefs (being one of 7 reefs in the Spratlies), was claimed by France as part of French Indochina in 1887 and first occupied on 10 April 1930, was invaded by Japan during WW II and converted to a submarine base, and has been occupied by Taiwan since September 1956 but also claimed by China, Vietnam and the Philippines; Itu Aba/Taiping is located about 1,000 kilometres south of Taiwan and 35 kilometres south-southwest of Philippine-occupied Loiata/Kota Island, hosts around 200 Taiwanese Coast Guard personnel and 600 Taiwanese soldiers, has abundant flora and fauna, serves as a rest stop for Taiwanese fishermen and is fitted with a lighthouse, radio and Taiwan's Central Weather Bureau stations, two water wells and a new [built in 2006-2007] 1,150-meter airstrip on which a C-130 *Hercules* transporter airplane first landed on 21 January 2008, followed by visit of Taiwan's President Chen Shui Bian accompanied by a significant naval force on 2 February 2008.¹⁷⁶

The disputed and longstanding claims over Spratly/Nansha (Truong Sa/Kalayaan) and Paracel/Xisha (Hoang Sa) Islands prompted the Joint Malaysia/Vietnam Submission to the CLCS of 6 May 2009 and Vietnam's Partial (North Area) Submission of 7 May 2009, of which the provocative Joint Submission divided all of the CS beyond 200 miles located in the gap between the EEZs of these two states, without any account of any possible rights of China, Brunei and the Philippines and without any account of any possible EEZ/CS of any of Spratly Islands, thus implying that they are all, pursuant to UNCLOS Article 121(3), rocks; were their maritime zones to be extended, this could in fact eliminate any outer CS

¹⁷⁵Lathrop, "Continental Shelf Delimitation Beyond 200 Nautical Miles", in: ASIL/IMB, Vol.VI (2011) 4153 at <http://www.brill.nl/international-maritime-boundaries-2>, *supra* note 3. On China's U-shaped line claim, see *supra* note 152.

¹⁷⁶Taiwan Asserts Claim to Taiping Island in Spratlys of 28 June 2008 at www.manilatimes.net/national/2008/june/28/yehey/top_stories/20080628top7.html, www.manilastandardtoday.com/?page=politics3_june28_2008 & www.tribune.net.ph/headlines/20080628hed5.html; Itu Aba/Taiping Island at http://en.wikipedia.org/wiki/Taiping_Island, www.globalsecurity.org/military/world/taiwan/taiping.htm, noting that as Taiwan's garrison is stationed on Itu Aba on a permanent basis, building of roads and military installations is an important task; www.425dxn.org/dc3mf/namyit.html & www.425dxn.org/dc3mf/ituaba.html. For overview of insular features comprised by Spratly Islands, see Paper by Marius Gjetnes, "The Legal Regime of Islands in the South China Sea" (Oslo University Faculty of Law 2000) 74-92; http://en.wikipedia.org/wiki/Spratley_Islands#Tabular_listing_of_features_showing_country_possessions & http://en.wikipedia.org/wiki/South_China_Sea_Islands; List of Occupied Spratly Islands obtained by e-mail of 4 July 2008 from Daniel J. Dzurek, Washington D.C. [E-mail: DJDzu@cs.com]; Global Security Claims to Paracels and Spratlies at www.globalsecurity.org/military/world/war/spratly-claims.htm; and Spratlys-Paracels Maps at http://www.spratlys.org/maps/1/paracel_spratly_88.jpg.

in this part of South China Sea.¹⁷⁷ Vietnam's Partial (North Area) Submission asserted Absence of Disputes and that this Submission was "without prejudice to the maritime delimitation between Vietnam and other relevant coastal States". Moreover, the Submission indicated that "Vietnam has undertaken efforts to secure the non-objection of the other relevant coastal States", but unlike in all other Submissions discussed in this article, Vietnam did not name any "other relevant coastal States". The 2009 Joint Malaysia/Vietnam Submission also did not name any other relevant states, but it did admit that "there are unresolved disputes in the Defined Area of this Joint Submission" and it cautiously assured the CLCS, "to the extent possible, that this Joint Submission will not prejudice matters relating to the delimitation of boundaries between States with opposite or adjacent coasts" and that Malaysia/Vietnam "have undertaken efforts to secure the non-objection of the other relevant coastal States".

Nevertheless, by means of its Notes Verbales of 13 April 2009, 7 May and 13 May 2009, China forcefully protested Vietnam's 2009 Partial (North Area) Submission and Malaysia/Vietnam's 2009 Joint Submission on the ground of in China's well known view on its "indisputable sovereignty over the islands in the South China Sea and the adjacent waters", as replied by the Philippines in reliance upon its own sovereignty over the Kalayaan (Spratly) Islands and by Vietnam - in reliance upon its own indisputable sovereignty over Hoang Sa (Paracel) and Truong Sa (Spratly) Archipelagos, making China's claims null and void, as again protested by China's Note Verbale of 14 April 2011 and as rejoined by Vietnam's Note Verbale of 3 May 2011.¹⁷⁸ Vietnam Foreign Affairs Ministry also reaffirmed its sovereignty over Paracels and Spratlys while protesting on 28 November 2009 against renewed intrusion of China's fishery patrol ships into the disputed areas, and again against a

¹⁷⁷Vietnam's 2009 Partial (North Area) Submission to the CLCS, ignoring Paracel Islands and regarding Vietnam's outer CS to the north of Joint Submission's area, Section 4: Absence of Disputes, and Malaysia/Vietnam's 2009 Joint Submission, ignoring Spratly Islands, Section 4: Disputes; China's Notes Verbales of 13 April 2009, 7 May and 13 May 2009, Vietnam Notes Verbales of 8 May and 18 August 2009, Malaysia's Notes Verbales of 20 May and 21 August 2009, Indonesia's Note Verbale of 8 July 2010, Philippines Notes Verbales of 4 August 2009 and 5 April 2011, China's Note Verbale of 14 April 2011, and Vietnam's Note Verbale of 3 May 2011 at www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm, www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm; Statement by the CLCS Chairman, UN Doc. CLCS/64 (1 October 2009), noting the deferral of Vietnam's 2009 Partial (North Area) Submission and Malaysia/Vietnam's 2009 Joint Submission at www.un.org/Depts/los/ & www.un.org/Depts/los/clcs_new/clcs_home.htm; Republic of Korea/Vietnam Agreement to Exploit South China Sea off the Coast of Vietnam with Map of China's U-Claim of 2 June 2009 at http://www.stratfor.com/memberships/139265/analysis/20090602_south_korea_vietnam_deal_explore_contested_waters; Sam Bateman et al., "Making Mischief" of 16 December 2010, *supra* note 152, at pp.10-16 at http://www.aspi.org.au/publications/publication_details.aspx?ContentID=275&pubtype=-1; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 555 [Figure 29.6: Outer CS Submissions in the South China Sea], 558-559 [Joint Malaysia/Vietnam Submission], 560 [Vietnam's Partial (North Area) Submission] ; Tran Truong Thuy (ed.), *The South China Sea: Towards a Region of Peace, Security and Cooperation* (Diplomatic Academy of Vietnam: The Gioi Publishers 2011) at <http://www.thegioipublishers.com.vn/en/home/>; Nguyen Hong Thao and Ramses Amer, "Coastal States in the South China Sea and Submissions to the CLCS" (2011) 42 *Ocean Development & International Law* 245-263; and Lathrop, "Continental Shelf Delimitation Beyond 200 Nautical Miles", in: ASIL/IMB, Vol.VI (2011) at <http://www.brill.nl/international-maritime-boundaries-2>, *supra* note 3, expecting that until China and the Philippines withdraw their objections or join Malaysia/Vietnam's 2009 Joint Submission, consideration of this Joint Submission will continue to be deferred.

¹⁷⁸*Id.*

Chinese vessel having intentionally cut on 26 May 2011 a submerged cable of a Vietnamese oil survey ship while it was conducting seismic tests, as followed by Vietnam's official visit to the ICJ-PCA on 27 September 2011.¹⁷⁹

Whereas the 2009 Joint Malaysia/Vietnam Submission excluded any eventual rights to any Spratlies/Nansha (Truong Sa/Kalayaan) of China, Brunei and the Philippines, Brunei filed in any event with the CLCS its Preliminary Submission of 12 May 2009, which envisages making by Brunei a full Submission in respect of the outer CS (the Northwest Borneo Shelf, the Northwest Borneo Trough and the Dangerous Grounds) which is already subject to Malaysia/Vietnam Joint Submission discussed above; Brunei's Preliminary Submission notes that there may exist areas of potential overlapping entitlements in respect of its outer CS beyond 200 miles and that following all other Submissions filed with the

¹⁷⁹See China Warns Vietnam over Spratly Pipeline of 11 April 2007 at www.tribune.net.ph/business/20070411bus1.html; China Opposes any Act (Exxon Mobil-PetroVietnam) Violating Its Sovereignty of 22 July 2008 at www.chinadaily.com.cn/china/2008-07/22/content_6867983.htm & www.atimes.com/atimes/China_Business/JG23Cb01.html; Vietnam Workshop on South China Sea of 27 November 2009 at www.thanhniennews.com/politics/?catid=1&newsid=53908 and Vietnam Opposes Chinese Ships as Hoang Sa (Paracel) and Truong Sa (Spratly) Islands of 28 November 2009 at www.thanhniennews.com/politics/?catid=1&newsid=53978 & <http://vietnamnews.vnagency.com.vn/showarticle.php?num=01POL281109>; Vietnam Fishing Vessel Sinks of 16 December 2010 at <http://english.peopledaily.com.cn/90001/90776/90883/7233380.html>; US-China Presidents Statement of 19 January 2011 at <http://www.whitehouse.gov/blog/2011/01/19/president-obama-welcomes-president-hu-china-white-house>, <http://www.fmprc.gov.cn/eng/zxxx/t788173.htm>, <http://www.bbc.co.uk/news/world-us-canada-12230982>, <http://www.voanews.com/english/news/Hu-Heads-to-Congress-to-Face-Toughest-Critics--114259269.html>; Rise of South China Sea Tensions and the U.S. Continues to Promote Dialogue Between the Disputed Parties of 5 June 2011 at <http://www.voanews.com/english/news/asia/China-Irks-Neighbors-as-Tensions-Rise-in-South-China-Sea-123197918.html>, http://articles.cnn.com/2011-06-04/world/china.gates.visit_1_gates-statement-robert-gates-military-to-military-ties?_s=PM:WORLD & <http://www.bbc.co.uk/news/world-asia-pacific-13661779>; China's Statement of 9 June 2011 at <http://www.fmprc.gov.cn/eng/xwfw/s2510/t829427.htm>; China/USA Dialogue of 27 June 2011 <http://www.voanews.com/english/news/China-Welcomes-New-Channel-for-Dialogue-With-US-124580784.html>; Philippines Ratchets Up Pressure on China of 11 July 2011 at <http://www.voanews.com/english/news/asia/Filipino-Government-Rachets-Up-Pressure-on-China-Over-South-China-Dispute--125342653.html>; Vietnam Affirms Its Indisputable Sovereignty over Hoang Sa and Truong Sa Archipelagos of 19 September 2011 at http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110919145333; ICJ Press Release No.2011/29 on Visit of Vietnam to the ICJ of 27 September 2011 at <http://www.icj-cij.org/presscom/files/3/16713.pdf> and Visit of Vietnam to the PCA of 27 Sept 2011 at http://www.pca-cpa.org/shownews.asp?news_id=320&pag_id=1261&ac=view; China/USA Dialogue of 15 February 2012 at <http://www.bbc.co.uk/news/world-asia-china-17036070>, <http://www.voanews.com/english/news/asia/China-Chinese-US-Leaders-Have-Frank-In-Depth-Exchange-of-Views-139345848.html>, <http://www.voanews.com/english/news/asia/Chinas-Xi-Begins-US-Visit-139242748.html> & <http://edition.cnn.com/2012/02/14/world/asia/china-us-vp-visit/index.html>; and http://en.wikipedia.org/wiki/South_China_Sea_Islands.

CLCS, Brunei's Preliminary Submission "is made without prejudice to any future delimitation of boundaries with other States".¹⁸⁰

In view of strong protests and counter-protests concerning Vietnam's 2009 Partial (North Area) Submission and Malaysia/Vietnam's 2009 Joint Submission discussed above, it appears likely that they will not be considered by the CLCS and that Brunei will not proceed with its actual Submission which - as it follows from Brunei's 2009 Preliminary Submission referred to above - would overlap with South China Sea area already covered by Joint Malaysia/Vietnam Submission. Further submissions were announced in Indonesia's Partial (North West of Sumatra) Submission of 16 June 2008, which noted that "Submissions

¹⁸⁰Brunei's 2009 Preliminary Submission, paras 12 & 26, ignoring some Spratly Islands in calculation of 200-mile and Outer CS limits at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/brn2009preliminaryinformation.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm, http://www.un.org/Depts/los/clcs_new/clcs_home.htm; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 555 [Figure 29.6: Outer CS Submissions in the South China Sea], 569-570 [Brunei's Preliminary Submission]; *supra* note 3. On disputed Louisa Reef/Terumbu Samarang Barat Kecil, see V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 453-454, 457 and Figure 18.12 at 634, who consider Louisa Reef as a part of the Spratlies at <http://www.brill.nl/maritime-political-boundaries-world>.

of the outer limits of the extended continental shelf of Indonesia in other areas will be made at a later stage”¹⁸¹.

Palau’s 2009 Submission announced that it did not prejudice a future Palau/Indonesia Outer CS Delimitation Agreement and any future Agreements between Palau/Japan (Okinotorishima), Palau/Philippines and Palau/Micronesia referred to before. In its Note Verbale of 4 August 2009, the Philippines noted its overlapping EEZ and outer CS with Palau and requested that the CLCS refrain from considering Palau’s Submission until after Palau and the Philippines have discussed and resolved their disputes; in reply, Note Verbale of Palau of 22 July 2010 recalled that its 2009 Submission had been duly notified in advance to the Philippines as being without prejudice to a future Palau/Philippines outer CS delimitation, which was not a subject of any dispute, and that the Philippines government was invited to engage in negotiations on a possible boundary with Palau.¹⁸²

¹⁸¹Indonesia’s Partial (North West of Sumatra) Submission of 16 June 2008, Section 2 and Section 5: Absence of Disputes, Notes Verbales of India of 25 March 2009 and Indonesia of 30 April 2009, confirming in reply to India’s Note, that the 2008 Submission is without prejudice to outer CS delimitation to be effected by extension of the equidistance drawn by the 1974-1977 India (Southern Nicobar Islands)/Indonesia (Sumatra) Continental Shelf Agreements, which gave full effect to all islands and rocks, and CLCS Recommendations of 27 March 2011 on Indonesia’s Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_idn.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Statement by the CLCS Chairman, UN Doc.CLCS/70 (11 May 2011) at http://www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; Indonesia’s Note Verbale of 7 August 2009 on Australia’s 2004 Submission and the 2008 CLCS Recommendations on Australia’s Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_aus.htm, www.ga.gov.au/news/index.jsp#clcs & www.ga.gov.au/image_cache/GA11214.pdf, *supra* note 169; Clive Schofield, Andi Arsana & Robert van de Poll, “The Outer Continental Shelf in the Asia-Pacific Region”, in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 543-545 [Australia and Figure 29.2]; Federated States of Micronesia’s 2009 Preliminary Partial (Eauripik Rise and Mussau Ridge) Submission, paras 5-6, 9 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/fsm_preliminaryinfo.pdf and Papua New Guinea’s 2009 Preliminary Partial (Mussau Ridge and Eauripik Rise) Submission, paras 5-6, 8 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/png_preliminaryinfo.pdf, both noted *infra* note 222 as involving overlapping boundaries with Indonesia; Clive Schofield, Andi Arsana & Robert van de Poll, “The Outer Continental Shelf in the Asia-Pacific Region”, in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 550-551 [Indonesia’s Partial Submission], 555 [Figure 29.6: Outer CS Submissions in the South China Sea]; *supra* note 3. See also Indonesia/Malaysia Delimitation Talks of 12 September 2010 at http://www.channelnewsasia.com/stories/afp_asiapacific/view/1080693/1/.html and Indonesia/Malaysia Oil of 15 February 2011 at http://www.rigzone.com/news/article.asp?a_id=104196 and Map at: http://www.rigzone.com/news/image_detail.asp?img_id=3267&a_id=104196. On Indonesia’s efforts to increase habitability of its potential UNCLOS Article 121(3) rocks, see *supra* note 166.

¹⁸²Notes Verbales of the Philippines and Palau of 4 August 2009 and 22 July 2010 respectively on Palau’s 2009 Submission at www.un.org/Depts/los/clcs_new/submissions_files/submission_plw_41_2009.htm; Statement by the CLCS Chairman, UN Doc. CLCS/72, para.18 (16 September 2011) at www.un.org/Depts/los/clcs_new/clcs_home.htm, *supra* note 161; Clive Schofield, Andi Arsana & Robert van de Poll, “The Outer Continental Shelf in the Asia-Pacific Region”, in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 551: Figure 29.4 and at 560-561 [Palau], *supra* note 161, noting that the Western part of Palau’s 2009 Submission is constructed by a Hedberg line from 128 points and is limited by Philippine’s 200-mile limits, and covers about 27,704 square km (Figure 29.4).

In parallel to preparation of the Philippines' Partial (Benham Rise) Submission to the CLCS, it was debated whether to exclude or to enclose the disputed Scarborough Reef/Huangyan Dao - along with Spratlies/Nansha (Truong Sa/Kalayaan) - by the Philippines archipelagic baselines. Uninhabited Scarborough/Huangyan Dao Reef, which is disputed by China, Taiwan and the Philippines, lies 137 miles from the west coast of Luzon and was used by the U.S. military in the 1990s, comprises chain of reefs and rocks, including South Rock (10 feet high), with a total area of 150 square kilometres, which would generate an EEZ/CS area of 54,000 square miles, and the longstanding use of which by fishermen from all its three claimants justifies, in Victor Prescott's and Clive Schofield's view, its exclusion from Article 121(3) rocks category; even though were Scarborough Reef to be awarded to the sovereignty of China (which includes Scarborough Reef into geographically separate and low-tide Macclesfield/Zhongsha Bank¹⁸³), the Philippines would likely advocate its discounting as a basepoint for drawing of the equidistant boundary.¹⁸⁴

The Philippine Archipelagic Baselines Act No.9522 eventually provided - despite of protests from China, Vietnam and Taiwan - that baselines around the disputed Scarborough Reef/Huangyan Dao and Spratlies/Nansha (Truong Sa/Kalayaan) would be determined under "the UNCLOS regime of islands". Therefore, in its Note Verbale of 13 April 2009, China protested Philippine Act No.9522 of 10 March 2009 Amending Archipelagic Baselines Act No.3046 of 17 June 1961, as Amended by Act No.5446 of 18 September 1968, on the ground that the above 2009 Act illegally claims Huangyan Dao Island/Scarborough Reef (referred to in this Act as Bajo de Masinloc) and some islands and reefs of Spratly/Nansha Islands (referred to as Kalayaan Island Group) of China as "areas over which the Philippines likewise exercises sovereignty and jurisdiction"; China's Note reiterated that any claim to

¹⁸³China includes Scarborough Reef into geographically separate and low-tide Macclesfield/Zhongsha Bank, which is claimed by China, Taiwan and the Philippines and is located 80 miles east of the Paracel Islands, distantly [about 280 miles] southwest of the Pratas Islands, 270 miles west of the Luzon, 290 miles east of Vietnam and north of the Spratly Islands. See http://en.wikipedia.org/wiki/Macclesfield_Bank; *Limits in the Seas No.127 - Taiwan's Maritime Claims* (U.S. Department of State 2005), at 14 at <http://www.state.gov/e/oes/ocns/opa/c16065.htm>, stating that while Taiwan claims the normal baseline for Macclesfield Bank [even though Taiwan depicts TS/CZ only around Scarborough Reef], this Bank is submerged at high-tide and as it lies seaward of the outer TS of an island, it cannot have TS of its own.

¹⁸⁴V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 28-31, 433-435 and Figure 18.4 at 626 (2005) at <http://www.brill.nl/maritime-political-boundaries-world>, also noting that were the Philippines to hold Scarborough Reef, a line of equidistance based on it would still be 140 miles from the nearest Chinese territory in the Xisha Qundao (Paracel Islands), which lies 150 miles from Hainan Dao that might be considered part of the Chinese mainland; Scarborough Reef Maps at www.iglou.com/n4gn/sr/maps.html, noting 3 rocks it comprises; http://pubs.wri.org/pubs_content_text.cfm?ContentID=86; and http://en.wikipedia.org/wiki/Scarborough_Shoal.

territorial sovereignty over Huiyangyan Island and Nansha Islands by any state other than China is null and void.¹⁸⁵

Philippines' Partial (Benham Rise) Submission to the CLCS of 8 April 2009 clearly related only to the Benham Rise, which is located to the east of Luzon in the Pacific Ocean and which is not subject to any maritime boundary disputes; but its Sections 3.3-3.4 envisaged future Submissions in the hotly disputed South China Sea by providing that:

3.3 Exercise of the Option of Partial Submission

As a gesture of good faith, the Philippines makes this Partial Submission in order to avoid creating or provoking maritime boundary disputes where there none, or exacerbating them where they may exist, in areas where maritime boundaries have not yet been delimited between opposite or adjacent coastal States. This is to build confidence and promote international cooperation in the peaceful and amicable resolution of maritime boundary issues. It does not in any manner prejudice the position of any coastal States.

3.4 Reservation of the Right to Make Other Submissions in the Future

Accordingly, this Partial Submission is made with reference to the Benham Rise Region along the Pacific coast and does not include other areas. The Philippines expressly reserves its right to make other Submissions for such other areas of the

¹⁸⁵F.V. Maragay, Philippines' Archipelagic Baselines of 12 August 2008 at www.manilastandardtoday.com/?page=politics2_aug12_2008; A.R. Remo, Memo to Cogress: Pass Baselines Bill Before UN CLCS Deadline of 19 August 2008 at <http://newsinfo.inquirer.net>; Philippine Senate Vows Quick Act on Baselines of 6 January 2009 at www.manilastandardtoday.com/?page=politics2_jan6_2009; Philippines Baselines Bill OK'd of 10 February 2009 at www.tribune.net.ph/headlines/20090210hed5.html & www.nhandan.com.vn/english/news/060209/domestic_v.htm; Philippines Archipelagic Baselines Act No.9522 of 1 March 2009 at www.senate.gov.ph/lis/pdf_sys.aspx?congress=14&type=republic_act, www.op.gov.ph/directives/RA9522.pdf, www.inquirer.net/map_api/spratlys, www.senate.gov.ph/lis/committee_rpt.aspx?congress=14&q=225 & www.senate.gov.ph/lisdata/57785137!.pdf; and together with China's Note Verbale of 13 April 2009, in *UN Law of the Sea Bulletin* 32 [Act No.9522] & 58 [China's Note Verbale] (2009 No.70) at www.un.org/Depts/los/; V.L. Forbes, Philippines' Archipelagic Baseline System Under Act N.9522, 16 *MIMA Bulletin* 12-15 (Kuala Lumpur 2009 No.2); Concurring Opinion of Judge Velasco Jr., Fns 38 & 46 [quoting B. Kwiatkowska, "Archipelagic Regime in Practice in the Philippines and Indonesia - Making or Breaking International Law?"(1991) 6 *IJMCL* 1-32] to Supreme Court's of the Philippines Judgment of 16 July 2011, Upholding Constitutionality of the Republic Act No.9522 Adjusting Philippine Archipelagic Baselines and Classifying Baselines Regime of Nearby Territories at <http://www.senate.gov.ph/lisdata/57785137!.pdf>, http://www.senate.gov.ph/lis/committee_rpt.aspx?congress=14&q=225, <http://dfa.gov.ph/main/> & <http://www.president.gov.ph/default.aspx>.

continental shelf beyond 200 miles at a future time in conformity with the provisions of Annex I to the Rules of Procedure of the CLCS.¹⁸⁶

The foregoing reservation and commitment of the Philippines have been interpreted as envisaging its possible South China Sea Submission that would cover the disputed Scarborough Reef/Huangyan Dao and Spratlies/Nansha (Truong Sa/Kalayaan) in the future.

In view of all these actual and prospective South China Sea Submissions, China enacted on 26 December 2009 its Island Protection Law referred to before and in February 2010 China completed construction of 13 permanent facilities - stone tablets and lighthouses - on islands, rocks and reefs in the East and South China Seas with a view to clarifying its territorial waters' baselines in these oil- and fish-rich areas.¹⁸⁷ By December 2010, China has constructed - in the disputed Spratlys area - a lighthouse on low-tide Subi Reef/Zhubi Dao which Chinese troops are occupying (using 3-story buildings, wharfs and helipad) but is

¹⁸⁶Philippines' 2009 Partial (Benham Rise) Submission to the CLCS, Section 3.5: Absence of Disputes and Sections 3.3-3.4 quoted in the main text above at www.un.org/Depts/los/clcs_new/submissions_files/submission_phl_22_2009.htm; Statement by the CLCS Chairman, UN Doc.CLCS/64 (1 October 2009) at www.un.org/Depts/los/; Philippines' Notes Verbales of 4 August 2009 and 5 April 2011, China's Note Verbale of 14 April 2011, and Vietnam's Note Verbale of 3 May 2011 on Vietnam's 2009 Partial (North Area) Submission and Malaysia/Vietnam's 2009 Joint Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm & www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm, *supra* note 177, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; Sam Bateman et al., "Making Mischief" of 16 December 2010, *supra* note 152, at pp.10-16 at http://www.aspi.org.au/publications/publication_details.aspx?ContentID=275&pubtype=-1; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 554 [Philippines' Partial (Benham Rise) Submission], 555 [Figure 29.6: Outer CS Submissions in the South China Sea]; Philippines Ratchets Up Pressure on China of 11 July 2011 at <http://www.voanews.com/english/news/asia/Filipino-Government-Ratchets-Up-Pressure-on-China-Over-South-China-Dispute--125342653.html>; and *supra* note 3.

¹⁸⁷China Island Protection Law [with 94% of China islands being uninhabited] of 26 December 2009 [in force: 1 March 2010], in: (2010) 25 *IJMCL* 425-436 at http://www.brill.nl/product_id18253.htm; China Builds 13 Lighthouses and Stone Tablets on Islands and Reefs of 10 February 2010 at http://en.ce.cn/National/Politics/201002/09/t20100209_20943090.shtml & <http://english.people.com.cn/90001/90776/90785/6891430.html>. On this and similar practice of other states with respect to potential UNCLOS Article 121(3) rocks, see *supra* notes 163-166.

being claimed by the Philippines and Vietnam and which lies 16 miles southwest of Philippine-occupied Thitu (Pagasa) Island.¹⁸⁸

Submissions in the South Pacific and U.S. Marine National Monuments

Along with concern of many South Pacific small island states that any limitations of the entitlement of islands would deny their full sovereignty, these states have been customarily making extensive claims to many insular formations - islands, rocks, islets, reefs, shoals and atolls which abound in the South Pacific region. A spectacular instance to which Tonga drew attention at the opening of the 1974 Caracas Session of UNCLOS III was the isolated Minerva Reef, comprising Teleki Tonga and Teleki Tokalan lying about 18 miles apart and 315 miles from Tonga's capital, over which Tonga proclaimed sovereignty in 1972 and adjusted the Reef's low-tide nature by compacting the coral into an elevation.¹⁸⁹ In November 2005, Fiji, in whose EEZ the Minerva Reef lies, reportedly lodged a complaint with the ISA (then presided over by its Secretary-General Ambassador Satya N. Nandan of Fiji) concerning territorial claim over Minerva as the traditional fishing ground for Fijians since

¹⁸⁸China Builds Lighthouse on Subi Reef in Spratlys of 8 December 2010 at <http://ph.yfittopostblog.com/2010/12/08/china-builds-lighthouse-on-phl-claimed-territory-in-spratlys/> & http://en.wikipedia.org/wiki/Subi_Reef and http://www.spratlys.org/maps/1/paracel_spratly_88.jpg; China Harasses Oil Exploration Vessel of Philippines in the Reed Bank (out of Spratlies) of 5 March 2011 at <http://www.voanews.com/english/news/Philippines-Says-China-Harrassed-Oil-Exploration-Vessel-117457638.html>; Rise of South China Sea Tensions and the U.S. Continues to Promote Dialogue Between the Disputed Parties of 5 June 2011 at <http://www.voanews.com/english/news/asia/China-Irks-Neighbors-as-Tensions-Rise-in-South-China-Sea-123197918.html> & <http://www.bbc.co.uk/news/world-asia-pacific-13661779>; China's Statement of 9 June 2011 at <http://www.fmprc.gov.cn/eng/xwfw/s2510/t829427.htm>; China/USA Dialogue of 27 June 2011 <http://www.voanews.com/english/news/China-Welcomes-New-Channel-for-Dialogue-With-US-124580784.html>; Philippines Ratchets Up Pressure on China of 11 July 2011 at <http://www.voanews.com/english/news/asia/Filipino-Government-Rachets-Up-Pressure-on-China-Over-South-China-Dispute--125342653.html>; Vietnam Affirms Its Indisputable Sovereignty over Hoag Sa and Truong Sa Archipelagos of 19 September 2011 at http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110919145333; ICJ Press Release No.2011/29 on Visit of Vietnam to the ICJ of 27 September 2011 at <http://www.icj-cij.org/presscom/files/3/16713.pdf> and Visit of Vietnam to the PCA of 27 Sept 2011 at http://www.pca-cpa.org/shownews.asp?nws_id=320&pag_id=1261&ac=view; and http://en.wikipedia.org/wiki/South_China_Islands.

¹⁸⁹UNCLOS III Official Records, Vol.I, Prince Tupoutoa (Tonga), 29th Meeting-4 July 1974, at 108-109, also referring to British sovereignty over Eddystone Lighthouse; D.P. O'Connell, *The International Law of the Sea*, Vol.I (1982) 197, noting that although some countries took a reserved attitude towards Tonga's claim to Minerva Reef, none formally questioned its legal basis; Silverstein (1990), *supra* note 156, at 422; Tonga's 1972 Royal Proclamation and 1978 Territorial Sea and EEZ Act No.30 and Republic of Minerva at http://en.wikipedia.org/wiki/Republic_of_Minerva, quoting Tonga's Royal Proclamation of 15 June 1972, as recognized by the South Pacific Forum in September 1972; Minerva Reef's History at www.landfallnavigation.com/minervareefs.html, www.qsl.net/n5xx/minerva.htm & http://en.wikipedia.org/wiki/Minerva_Reefs.

centuries, which claim, however, was forcefully dismissed by Tonga as baseless in view of its 1972 Royal Proclamation (not protested by Fiji or any other states at any time before).¹⁹⁰

Given that in the Northern region covered by New Zealand's 2006 Partial Submission to the CLCS, New Zealand, Fiji and Tonga all have continental shelf entitlements on the Kermadec Ridge, Havre Trough and Colville Ridge, the Submission was made without prejudice to the ongoing delimitation negotiations between New Zealand and each of these two states - Fiji and Tonga, which both indicated to New Zealand that they had no objections to the CLCS making Recommendations without prejudice to those future delimitations; New Zealand's outer continental shelf in this Northern region extends along the Kermadec and Colvillia Ridges, north from the line 200 miles from the NZ territorial sea baseline, which is derived from basepoints on Raoul Island, to the intersection with the lines 200 miles from the

¹⁹⁰*Id.*, Republic of Minerva; Tonga Dismisses Fiji's Claim to Minerva Reef of 1/4 November 2005 at www.freerepublic.com/focus/f-news/1513965/posts,
www.taimiotonga.com/Taimi/News.asp?db=1&N_ID=288,
www.mvariety.com/calendar/nov/04/pacific/pac07.htm &
www.rnzi.com/pages/news.php?op=read&id=20194.

TS baselines of Fiji and Tonga.¹⁹¹ Resolution of New Zealand's boundaries with Fiji and Tonga depends on a settlement of the Fiji/Tonga Minerva Reef and delimitation dispute.¹⁹²

In Tonga's 2009 Partial (Eastern Part of the Kermadec Ridge) Submission to the CLCS, Tonga noted that overlaps of its maritime spaces with those of Fiji and New Zealand have not been resolved yet by means of their maritime boundary delimitation agreements and

¹⁹¹New Zealand's 2006 Partial Submission, Part 5: Relevant Maritime Delimitations [with Australia, Fiji, Tonga & France (New Caledonia)], Note Verbale of France and New Zealand's Reply of 10 July 2006; Note Verbale of Fiji of 23 June 2006; Note Verbale of Tonga of 8 April 2008 and New Zealand's Reply of 31 July 2008; Notes Verbales of Japan of 28 June 2006 and the Netherlands of 19 December 2006 concerning Antarctica, all of them at www.un.org/Depts/los/clcs_new/submissions_files/submission_nzl.htm; New Zealand's Note Verbale concerning French New Caledonia of 15 August 2007 on France's 2007 Partial (French Guyana and New Caledonia) Submission at www.un.org/Depts/los/clcs_new/submissions_files/submission_fra.htm quoted *infra*; 22nd CLCS Session, 18 August-12 September 2008, *Press Release SEA/1908* of 12 September 2008 at www.un.org/News/Press/docs//2008/sea1908.doc.htm; CLCS Recommendations of 22 August 2008 on New Zealand's 2006 Submission at www.un.org/Depts/los/clcs_new/submissions_files/submission_nzl.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; *UN Secretary-General Oceans Report*, UN Doc.A/63/63, paras 23-25 (2008); Fiji's Partial (Lau Ridge - Northern South Fiji Basin) Submission of 20 April 2009, Section 4: Absence of Disputes and Note Verbale of New Zealand of 29 June 2009, stating that they held consultations and that this Fiji's Partial Submission is without prejudice to the future Fiji/New Zealand delimitation at www.un.org/Depts/los/clcs_new/submissions_files/submission_fji_24_2009.htm, quoted *infra*; Fiji's 2009 Preliminary Partial (Southeast-North Fiji Basin, Lau-Colville, Tonga-Kermadec) Submission, Section E: Outstanding Maritime Delimitations, stating that this Fiji's Preliminary Partial Submission is made without prejudice to its delimitation with New Zealand at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/fji_2009_preliminaryinfo.pdf, quoted *infra*; NZ Oil Maps at www.rigzone.com/news/image_results.asp?r_id=4; and *supra* note 3. Note that the 2004 Australia/New Zealand EEZ/CS Boundaries Treaty [in force: 25 January 2006] is relevant to New Zealand's 2006 Partial Submission in the Northern, Western and Southern regions, *Australian Treaty Series* at www.austlii.edu.au/au/other/dfat/treaties/notinforce/2004/1.html; Press Release of 25 July 2004 at www.foreignminister.gov.au/releases/2004/fa112b_04.html and Background Information at www.foreignminister.gov.au/releases/2004/fa112a_04_bg.html; ASIL/IMB Vol.V, Report No.5-26, at 3759-3777 at <http://www.brill.nl/international-maritime-boundaries>; *UN Law of the Sea Bulletin* 40-46 (2005 No.55) & at 40 (2005 No.58). See also Vladimir Jares, "The Work of the CLCS", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 464-465 [New Zealand]; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", *id.*, at 545-547 and Figure 29.3 at 549 [New Zealand].

¹⁹²See *supra* notes 189-190; and Absence of Fiji/NZ/Tonga Continental Shelf Boundaries of 3 April 2008 at http://stuckinfijimud.blogspot.com/2008_03_30_archive.html.

that Tonga's Partial Submission was without prejudice to those unresolved boundaries and to Submissions to the CLCS by the other two states.¹⁹³

Fiji was during UNCLOS III vitally interested in preserving insular status of its small sandy cay Ceva-i-Ra (Conway Reef), measuring 365 by 73 metres and 1.8 metres high, located some 300 miles off Fiji and since 1977 possessing a 200-mile EEZ.¹⁹⁴ Subsequently, Ceva-i-Ra was given full effect under the 1983 Fiji/France (New Caledonia, Wallis and Futuna) EEZ Delimitation Agreement, in exchange for Fiji's implicit recognition of France's (New Caledonia's) sovereignty over small volcanic uninhabited Hunter and Matthew Islands, which lie some 150 miles east of Noumea and have also been claimed by Vanuatu, and of which Hunter was used as a French basepoint under that Agreement.¹⁹⁵ However, over two decades later Vanuatu protested France's 2007 Partial Submission (French Guyana and New Caledonia) to the CLCS as being prejudicial to Vanuatu's sovereignty over Hunter (Umaenupne) and Matthew (Leka) Islands and the prospective France (New

¹⁹³Tonga's 2009 Partial (Eastern Part of the Kermadec Ridge) Submission, pp.5-9, and New Zealand's Note Verbale of 29 June 2009, confirming that it has no objection to the CLCS making recommendations on this Tonga's Partial Submission without prejudice to the future Tonga/New Zealand boundary delimitation at www.un.org/Depts/los/clcs_new/submissions_files/submission_ton_46_2009.htm; Fiji's Partial (Lau Ridge - Northern South Fiji Basin) Submission of 20 April 2009, Section 4: Absence of Disputes, stating that it held consultations with Tonga that Fiji's Partial Submission is without prejudice to the future Fiji/Tonga delimitation at www.un.org/Depts/los/clcs_new/submissions_files/submission_fji_24_2009.htm, quoted *infra*; Fiji's 2009 Preliminary Partial (Southeast-North Fiji Basin, Lau-Colville, Tonga-Kermadec) Submission, Section E: Outstanding Maritime Delimitations, stating that this Fiji's Preliminary Partial Submission is made without prejudice to its delimitation with Tonga at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/fji_2009_preliminaryinfo.pdf, quoted *infra*; France's 2009 Preliminary Partial (French Polynesia, Wallis & Futuna Islands) Submission, Section 4: Delimitation entre Etats at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/fra2009infos_preliminaires_polynesie_wallis_f.pdf, quoted *infra*; Statements by the CLCS Chairman, UN Docs CLCS/64 (1 October 2009) and CLCS/66 (30 April 2010) at www.un.org/Depts/los/ and www.un.org/Depts/los/clcs_new/clcs_home.htm; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 561 and Figure 29.3 [Tonga]; *supra* note 3. On Tonga/United States (American Samoa) Maritime Delimitation Negotiations, see *supra* note 135.

¹⁹⁴*Limits in the Seas No.101 - Fiji's Maritime Claims* (U.S. Department of State 1984) at <http://www.state.gov/e/oes/ocns/opa/c16065.htm>; *UN Law of the Sea Bulletin* 66 (2008 No.66); http://en.wikipedia.org/wiki/Conway_Reef.

¹⁹⁵1983 Fiji/France Agreement, ASIL/IMB Vol.I (1993), Report No.5-6, at 995-1001 and Vol.V (2005), Report No.5-6/Add.1/Corr.1, at 3729-3732 at <http://www.brill.nl/international-maritime-boundaries>. On Hunter and Matthew Islands, see Wolfgang Schippke at www.425dxn.org/dc3mf/matth_e.html, www.iomoon.com/matthew.html & <http://islands.unep.ch/CLR.htm>; boundary calculations by V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 400-402 at <http://www.brill.nl/maritime-political-boundaries-world>; New President in French Polynesia of 4 March 2005 at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4317523.stm>; France's \$ 2.3 Billion Aid to New Caledonia of 24 August 2005 at www.pacificmagazine.cc/pina/pinadefault2.php?urlpin_aid=16566; France/Vanuatu Partnership Agreement for 2006-2010 of 27 June 2006 at www.ambafrance-us.org/news/briefing/us270606.asp; La France et le Vanuatu at http://www.diplomatie.gouv.fr/fr/pays-zones-geo_833/vanuatu_580/france-vanuatu_3395/index.html; and http://en.wikipedia.org/wiki/Matthew_and_Hunter_Islands.

Caledonia)/Vanuatu maritime delimitation and as a result, France requested the CLCS to refrain from considering part of its Submission (Southeastern part of New Caledonia) involving these two disputed islands.¹⁹⁶ In its 2009 Preliminary Submission, Vanuatu reaffirmed its sovereignty over Hunter and Matthew [as further reaffirmed by Vanuatu's Maritime Zones Act No.06 of 2010], it recognized that there is a longstanding dispute with France over these islands and their surrounding maritime areas and it anticipated that a full Vanuatu's Submission involving these two islands will be filed with the CLCS by 2015.¹⁹⁷ Along with this Preliminary Submission, Vanuatu also filed a protest against Fiji's 2009 Partial (Lau Ridge - Northern South Fiji Basin) Submission, stressing that the area claimed by Fiji as South East Region of the North Fiji Basin, Lau-Colville, Tonga-Kermadec

¹⁹⁶France's 2007 Partial (French Guyana and New Caledonia) Submission, Section 4: Absence of Disputes, Note Verbale of New Zealand concerning French New Caledonia of 15 August 2007, Notes Verbales of Vanuatu Concerning Hunter and Matthew Islands of 3 and 11 July 2007 and Reply of France of 18 July 2007, stressing that "this action by France should not be construed by Vanuatu or by any other State as recognition of the legitimacy of Vanuatu's position at www.un.org/Depts/los/clcs_new/submissions_files/submission_fra.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; France's Extralac Submission to the CLCS by 2009 at www.extralac.fr/FR/extensions/Wallis.php, www.extralac.fr/FR/extensions/Futuna.php & www.extralac.fr/FR/extensions/Nouvelle_caledonie.php; 20th CLCS Session, 27 August-14 September 2007 and *UN Secretary-General Oceans Report*, UN Doc. A/63/63, paras 29-30 (2008) at www.un.org/Depts/los/; Vanuatu Hopes for Talks with France over Hunter and Matthew Islands of 27 July 2007 at www.rnzi.com/pages/news.php?op=read&id=33988; 22nd CLCS Session, 18 August-12 September 2008, *Press Release SEA/1908* of 12 September 2008 at www.un.org/News/Press/docs//2008/sea1908.doc.htm & www.un.org/Depts/los/; Note Verbale of France and NZ Reply of 10 July 2006 concerning New Zealand's 2006 Partial Submission and the 2008 CLCS Recommendations on NZ Submission at www.un.org/Depts/los/clcs_new/submissions_files/submission_nzl.htm, *supra* note 190; Vanuatu and France Will Not Clash over Hunter and Matthew Islands of 30 July 2009 at <http://www.radioaustralia.net.au/pacbeat/stories/200907/s2641259.htm>; CLCS Recommendations of 2 September 2009 [Sections I.4 & III.B: New Caledonia, 2: Notes Verbales of Other States (Vanuatu and New Zealand)] on France's 2007 Partial (French Guyana and New Caledonia) Submission at www.un.org/Depts/los/clcs_new/submissions_files/submission_fra.htm; Statement by the CLCS Chairman, UN Doc. CLCS/64 (1 October 2009) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; and *supra* note 3.

¹⁹⁷Vanuatu's Preliminary Submission of 10 August 2009 at www.un.org/Depts/los/clcs_new/submissions_files/preliminary/vut_2009_preliminaryinfo.pdf, www.un.org/Depts/los/clcs_new/commission_preliminary.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 547-549 and Figure 29.3 [France (New Caledonia)]; Vanuatu's Maritime Zones Act No.06 of 2010, stating that the sovereignty of Vanuatu comprises all islands within the archipelago, including Mathew (Umanepne) and Hunter (Leka) Islands (Article 2(a)) and Maritime Zones Act Amendments of the Schedule Order No.81 of 2009, *UN Law of the Sea Bulletin* 14-24, 25-37, Map at 38 (2010 No.73).

Complex conflicts with Vanuatu's sovereignty over Hunter and Matthew Islands and that this area of Fiji's Partial Submission is, therefore, in dispute between the two states.¹⁹⁸

Although Vanuatu thus protested 2007 France's and 2009 Fiji's Partial Submissions to the CLCS on account of their claims affecting Vanuatu's sovereignty over Hunter and Matthew as reaffirmed in Vanuatu's 2009 Preliminary Submission referred to above, Vanuatu did not protest against Australia's having sought prior consent of only France (but not Vanuatu) for Australia's 2004 Submission as being without prejudice to Hunter/Matthew and Australia's Norfolk Island boundary. This applies to Australia 2004 Submission's region of Three Kings Ridge (enclosing an area of 48,420 square kilometres), which is a submerged island arc system lying to east of Australia's Norfolk Island (of 34 square kilometres), hosted penal colonies in the past (1788-1814 and 1825-1855) and was resettled by Pitcairn Islanders; in particular, the boundary drawn in this region under the 1982 Australia/France Maritime Delimitation Treaty might be extended east of its ending Point R22, provided Hunter and

¹⁹⁸Fiji's Partial (Lau Ridge - Northern South Fiji Basin) Submission of 20 April 2009, Section 4: Absence of Disputes referring to Fiji's overlapping boundaries with New Zealand and Tonga (but not with Vanuatu), Notes Verbales of New Zealand of 29 June 2009 and Vanuatu of 12 August 2009 at www.un.org/Depts/los/clcs_new/submissions_files/submission_fji_24_2009.htm & http://www.un.org/Depts/los/clcs_new/commission_submissions.htm and Fiji/Solomon Islands/Vanuatu's 2009 Preliminary Joint (North Fiji Basin) Submission, paras 4-5, noting that this Preliminary Joint Submission does not - pursuant to UNCLOS Article 76(10) and Article 9 of Annex II - prejudice maritime delimitations involving the three states concerned at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/fji_slb_vut_2009_preliminaryinfo.pdf & http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; Statement by the CLCS Chairman, UN Doc. CLCS/64 (1 October 2009) at www.un.org/Depts/los/. See also Fiji's 2009 Preliminary Partial (Southeast-North Fiji Basin, Lau-Colville, Tonga-Kermadec) Submission, Section E: Outstanding Maritime Delimitations, stating that this Fiji's Preliminary Partial Submission is made without prejudice to its delimitations with Tonga and New Zealand at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/fji_2009_preliminaryinfo.pdf; Fiji/Solomon Islands' 2009 Preliminary Partial (Charlotte Bank Region) Submission, para.5, noting that this Submission is made without prejudice to any future delimitations involving Fiji and/or Solomon Islands at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/fji_slb_2009_preliminaryinfo.pdf; Solomon Islands' 2009 Preliminary Submission on outer CS beyond 200 miles in respect to a high seas enclave at the junction of Solomon Islands, Papua New Guinea and Australia EEZs without prejudice to any future negotiations concerning this high seas pocket at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/slb_preliminaryinfo.pdf, www.un.org/Depts/los/clcs_new/commission_preliminary.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; France's 2009 Preliminary Partial (French Polynesia, Wallis & Futuna Islands) Submission, Section 4: Delimitation entre Etats at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/fra2009infos_prelinaires_polynesie_wallis_f.pdf, quoted *infra*; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 547-549 and Figure 29.3 [France (New Caledonia)], 556-557 [Fiji's 2009 Partial Submission and Figure 29.7], 562 [Fiji's 2009 Preliminary Partial Submission], 562-563 [Fiji/Solomon Islands' 2009 Preliminary Partial Submission], 563 [Fiji/Solomons/Vanuatu's 2009 Joint Preliminary Submission], 564 [Solomon Islands' 2009 Preliminary Submission]; and *supra* note 3.

Matthew Islands - also claimed by Vanuatu - are awarded to France (New Caledonia).¹⁹⁹ France's Note Verbale of 28 March 2005 expressly confirmed that France had no objection to the CLCS making Recommendations on those parts of Australia's Submission that concern areas bordering on French territories in the Three Kings (and Kerguelen Plateau) to the extent that such Recommendations are without prejudice to any final Australia/France delimitation.²⁰⁰ Australia's and New Zealand's shelf entitlements on the Three Kings Ridge have been delimited by their 2004 EEZ/CS Boundaries Treaty referred to earlier.²⁰¹

Similar "trade-off" like in case of Ceva-i-Ra and Hunter/Matthew Islands under the 1983 Fiji/France (New Caledonia, Wallis & Futuna) EEZ Delimitation Agreement discussed above, took, according to Symeon Karagiannis, place by means of the 1980 Cook Islands/United States (American Samoa) Maritime Boundary Treaty, which gave full effect to Samoa's uninhabited Rose Island (of 20 acres of land and 1,600 acres of lagoon, supporting a dynamic reef ecosystem and subsequently designated as the 2009 U.S. Rose Atoll Marine National Monument referred to below) in exchange for renouncing by the U.S. of its claims to four atolls (Pernhyn, Pukapuka, Manihiki and Rakahanga) in Cook Islands' favour.²⁰² Full effect was also given to all islands, islets and rocks covered by the 1990 Cook Islands/France Maritime Delimitation Agreement, with no distinction made between inhabited Cook Islands and uninhabitable small French Polynesian features of Bellinghausen, Scilly, Mopelia and

¹⁹⁹1982 Australia/France Maritime Delimitation Treaty, 1329 UNTS 107-115; ASIL/IMB Vol.I (1993), Report No.5-1, at 905-913 at <http://www.brill.nl/international-maritime-boundaries-3>, Australia's 2004 Submission - Three Kings Ridge region, France's Note Verbale of 28 March 2005 and the 2008 CLCS Recommendations [para.116] on Australia's Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_austr.htm & http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; www.ga.gov.au/news/index.jsp#clcs & www.ga.gov.au/image_cache/GA11214.pdf, Australia's Maritime Jurisdiction Map Series at <http://www.ga.gov.au/amsis/index.jsp> & <http://www.ga.gov.au/marine/jurisdiction/map-series.html>, *supra* note 169; Norfolk Island at www.wikinfo.org/wiki.php?title=Norfolk_Island, noting that it is famous for its very striking pine tree that originates from the island, also pictured in its flag; Serdy (2005) 36 ODIL 201, *supra* note 169, at 207-208, 212, 213, also noting that between Point TKR-ECS-347 and the Australian 200-mile line drawn from Norfolk Island, the outer CS limit is defined by the 200-mile line constructed from Walpole Island (France) and Hunter/Matthew Islands, from which an unspecified number of turning points may be inferred that are the intersections of arcs drawn 200 miles from and concave to basepoints on these islands.

²⁰⁰*Id.*, France's Note Verbale of 28 March 2005 on Australia's 2004 Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/aus04/clcs_03_2004_los_fra_en.pdf & http://www.un.org/Depts/los/clcs_new/submissions_files/submission_austr.htm. See also France's 2009 Partial (Antilles - Guadeloupe & Martinique - and Kerguelens) Submission, Section 4: Absence of Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_fra1.htm and Extraplac at <http://www.extraplac.fr/FR/extensions/Kerguelen.php>, *supra* notes 65 & 94.

²⁰¹2004 Australia/New Zealand Treaty and NZ's 2006 Partial Submission to the CLCS, *supra* note 191.

²⁰²ASIL/IMB Vol.I (1993), Report No.5-5, at 985-993 at <http://www.brill.nl/international-maritime-boundaries-3>; S. Karagiannis, "Les Rochers qui ne se prétent pas à l'habitation humaine ou à une vie économique propre et le droit de la mer"(1996) 29 *Revue Belge de Droit International* 559, 616. On Rose Island being often included with Swains Island and on Tonga/United States (American Samoa) Maritime Delimitation Negotiations, see *supra* note 135.

Maria.²⁰³ The four atolls of Pernhyn, Pukapuka, Manihiki and Rakahanga are listed - along with Nassau and Suwarrow - as forming Cook Islands' northern group, in Cook Islands' 2009 Submission (Manihiki Plateau) to CLCS, which does not prejudice Agreements with the United States (1980) and France (1990) referred to above and future delimitations of Cook Islands with Niue, New Zealand (Tokelau) and Kiribati.²⁰⁴

While Kiribati's CLCS deadline is only in February 2013, New Zealand's Submission for Tokelau will follow in 2014 and in the meantime New Zealand (Tokelau)'s 2009 Preliminary Submission was submitted without prejudice to any future delimitation of boundaries with Tokelau's neighbouring states (Cook Islands, France, Kiribati, American Samoa).²⁰⁵ France's 2009 Preliminary Partial (French Polynesia and Wallis & Futuna Islands) Submission declared that this Submission was made without prejudice to delimitation of boundaries of France - with respect to French Polynesia and Wallis and Futuna Islands - with Tonga, Fiji, Tokelau, Tuvalu (of which CLCS deadline is in December 2012) and other states concerned.²⁰⁶ It is noteworthy that French Polynesia includes two Mururoa and Fangataufa Atolls that featured prominently in the 1995 *New Zealand v. France Nuclear Tests (Request for an Examination of the Situation)* Order, which according to ICJ President Schwebel, influenced decisions of then President Jacques Chirac to scale down the French nuclear testing and to carry out study of the radiological situation at these Atolls in the South

²⁰³1990 Cook Islands/France (Polynesia) Agreement, ASIL/IMB Vol.I (1993), Report No.5-18 at 1175-1181 at <http://www.brill.nl/international-maritime-boundaries-3>; Karagiannis, *supra* note 202, at 616-617; Cook Islands' 2009 Submission to the CLCS at www.un.org/Depts/los/clcs_new/submissions_files/submission_cok_23_2009.htm, *infra* note 204 and Extraplac at www.extraplac.fr/FR/extensions/Polynesie.php; *supra* note 3.

²⁰⁴Cook Islands' 2009 Submission (Manihiki Plateau), Section 5: Outstanding Maritime Delimitations at www.un.org/Depts/los/clcs_new/submissions_files/submission_cok_23_2009.htm; Statement by the CLCS Chairman, UN Doc. CLCS/64 (1 October 2009) at www.un.org/Depts/los/ & www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3.

²⁰⁵New Zealand (Tokelau)'s 2009 Preliminary Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/nzl2009tokelau_preliminary_information.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; France (Wallis & Futuna)/New Zealand (Tokelau) Maritime Boundaries Delimitation Agreement of 30 June 2003 [in force: 12 November 2003], ASIL/IMB Vol.VI (2011), Report No.5-30 (McDorman and Schofield), at 4339 at <http://www.brill.nl/international-maritime-boundaries-2>; UNGA Resolution on Question of Tokelau of 24 June 2011 at <http://www.un.org/News/Press/docs/2011/gacol3227.doc.htm>; *supra* note 3. On U.S. islands involved in delimitation with Kiribati, see *infra* note 220.

²⁰⁶France's 2009 Preliminary Partial (French Polynesia, Wallis & Futuna Islands) Submission, Section 4: Delimitation entre Etats at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/fra2009infos_preliminaires_polynesie_wallis_f.pdf, www.un.org/Depts/los/clcs_new/commission_preliminary.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; France's Extraplac Submission to the CLCS by 2009 at <http://www.extraplac.fr/FR/extensions/Polynesie.php>, www.extraplac.fr/FR/extensions/Wallis.php, www.extraplac.fr/FR/extensions/Futuna.php & <http://www.extraplac.fr/FR/extensions/geographie.php>; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) Figure 29.8 at 563 and 565-566, noting the possibility of the future UK's Partial (Pitcairn Island) Submission [French Polynesia, Wallis & Futuna]; and *supra* note 3.

Pacific.²⁰⁷ As New Zealand's Counsel Sir Elihu Lauterpacht during the *Nuclear Tests* proceedings pointed out, the two Atolls, which technically are islands within the definition contained in UNCLOS Article 121 and which consist of a coral crown upon a volcanic base, form part of French Polynesia and are situated 600 miles from Tahiti, 2,500 miles from New Zealand, 3,000 miles from Australia, and 3,000 miles from Chile and Peru, with Fangataufa being 10 kilometres long and 5 kilometres wide, and Mururoa being 28 kilometres long and 10 kilometers wide and having no indigenous population, but supporting some 2,000 French scientists, military personnel, and staff affiliated with the atomic testing at that time.²⁰⁸

France reportedly made, jointly with the 2009 Preliminary Partial (French Polynesia and Wallis & Futuna Islands) Submission referred to above, a Preliminary Partial (Clipperton Island) Submission, which France apparently withdrew the next day from the CLCS and thereafter France transmitted Clipperton EEZ's coordinates to UN on 26 November 2010.²⁰⁹ The uninhabited and remote Clipperton (Passion) Island, which has long attracted attention as one of France's potential Article 121(3) rocks, is administered from French Polynesia, lies 580 miles south Mexico in the tuna-rich Northwest Pacific area, and it

²⁰⁷*New Zealand v. France Nuclear Tests (Request for an Examination of the Situation)* Order, ICJ Reports 1995, 288, Declaration of Vice-President Schwebel, 309, Separate Opinion of Judge Shahabuddeen, 312, Dissenting Opinion of Judge Weeramantry, 317. On that Order's impacts, see remarks of then ICJ President Stephen M. Schwebel, "The Impact of the International Court of Justice", in: *Liber Amicorum Boutros Boutros-Ghali* (1998) 663, 670-671 at www.bruylant.be; IAEA General Conference Resolution GC(42)/RES/14 on Study of the Radiological Situation at the Atolls of Mururoa and Fangataufa of 25 September 1998 and *IAEA Press Release* 98/9 of 29 June 1998 at www.iaea.org, reprinted in 14 *International Organizations and the Law of the Sea - NILOS Documentary Yearbook* (1998) 731 and 743 at <http://www.brill.nl/international-organizations-and-law-sea-1998> & <http://www.brill.nl/publications/international-organizations-and-law-sea>. For comprehensive analysis of both procedural and environmental issues, see B. Kwiatkowska, "New Zealand v. France Nuclear Tests: The Dismissed Case of Lasting Significance" (1996) 37 *Virginia Journal of International Law* 107-190 at <http://www.haguejusticeportal.net/eCache/DEF/4/628.html>; Sir Elihu Lauterpacht CBE QC, "The 1972-1974 and 1995 Nuclear Tests Cases", in: *Nuclear Weapons in International Law and Politics* (BIICL London, 16 March 2007) at www.biicl.org/files/2593_16th_march_programme.pdf & www.biicl.org/events/view/-/id/137. Note that a side effect of *Nuclear Test* case was that since France did not wish to take a risk of electing its national to the ITLOS (who could easily lose given opposition to French nuclear tests), while Britain could not take part in the election process due to deferring its accession to the UNCLOS, France nominated an outstanding UK candidate David H. Anderson, who was duly elected as the ITLOS Judge. See *ITLOS/Press/4* of 1 November 1996 at www.itlos.org.

²⁰⁸*New Zealand v. France Nuclear Tests* Hearings, CR 95/19, 7-71 [Counsel Sir Elihu Lauterpacht, 11 September 1995] at www.icj-cij.org, *infra* note 226; Mururoa & Fangataufa at <http://en.wikipedia.org/wiki/Mururoa> & <http://en.wikipedia.org/wiki/Fangataufa>.

²⁰⁹France's Preliminary Partial (Clipperton Island) Submission of 8 May 2009 which was withdrawn the next day from www.un.org/Depts/los/clcs_new/commission_preliminary.htm, and which was followed by transmission of Clipperton EEZ's coordinates to UN on 26 November 2010, as reported by French Attorney-at-Law Richard Meese, "Bilan d'étape au 12 mai 2009 des demandes d'extension du plateau continental à la CLPC", in: *Les implications juridiques de la ratification de la Convention des Nations Unies sur le droit de la mer* (Université Mohammed V-Souissi 2010) 247, 258 ; France's 1978 Decree Establishing 200-Mile EEZ Around Clipperton Island, as transmitted by France to the UN on 26 November 2010, in *UN Law of the Sea Bulletin* 63, Map at 68 (No.74 2010) at www.un.org/Depts/los/; and France's Extrajurisdictional Submission to the CLCS by 2009 at <http://www.extrajurisdictional.fr/FR/extensions/geographie.php> & www.extrajurisdictional.fr/FR/extensions/Clipperton.php.

is the ring-shaped atoll that includes both coral and volcanic features (of 7 square kilometres and 21 meters high), possesses a lighthouse erected by Mexico in 1906 and is being visited by Mexican fishermen and the French Navy (with French plans to establish a permanent fishing base on Clipperton in 1981-1986 having not materialized); Clipperton supported in the past guano-harvesting (by American Guano Mining Company and British Pacific Island Company), Mexican military garrison (some 100 people until mid-1917) and many scientific U.S. and French scientific expeditions.²¹⁰ In the late 1930s, Clipperton was visited twice by U.S. President Franklin D. Roosevelt who contemplated it to become an U.S. possession for use as an airbase for Pacific Ocean,²¹¹ followed by the 1931 *France/Mexico Clipperton Island Award*, which Sir Hersch Lauterpacht characterized as "an example of the elasticity of the notion of occupation", and of which inarticulate reason might have been desire of Italian King Victor Emmanuel III, who rendered that Award, to obtain Mediterranean naval concessions from France.²¹² Due to its location within Pacific Ocean floor abundant in polymetallic nodules, the 200-mile EEZs of France's Clipperton and Mexico's tiny Clarion Island are not far from - though outside the limits of - mining contracts issued by the ISA Authority to 7 Pioneer Investors and in 2005 - to Germany in the so-called Clarion-Clipperton Fracture Zone (CCZ) of the considerable mining potential; the CCZ stretches from the coast of Baja California to an area south-east of Hawaii and is covered by the Kaplan Project on the CCZ Seabed Ecosystems and Biodiversity carried out by the ISA, University of Hawaii, British Natural History Museum, JAMSTEC (Japan), IFREMER (France) and

²¹⁰Clipperton Island at www.wikinfo.org/wiki.php?title=Clipperton_Island, also noting at 2, that it was named after John Clipperton, an English pirate who fought the Spanish during the early 18th century and who used the island as a base for his raids on shipping, and that it was named Ile de la Passion when two French ships reached the island in 1708; www.wikinfo.org/wiki.php?title=Islands_controlled_by_France_in_the_Indian_and_Pacific_oceans; P. Niauxat, "Clipperton, source de richesse ou héritage inutile?", *Defense Nationale* (1977) 107-118; Karagiannis (1996), *supra* note 202, at 611-612.

²¹¹Clipperton Island at www.wikinfo.org/wiki.php?title=Clipperton_Island, at 3, adding that in 1944 President Roosevelt ordered the Navy to occupy the island in one of the most secret U.S. operations of World War II and that Rear Admiral Byrd undertook several expeditions to Clipperton to assess its potential as an airbase.

²¹²1931 *France/Mexico Clipperton Island Award*, (1932) 26 AJIL 390, (1933) 27 AJIL 130; Sir Hersch Lauterpacht, "Sovereignty over Submarine Areas" (1950) 27 *British YIL* 376, 416-417; Karagiannis (1996), *supra* note 202 at 594; Kwiatkowska, *Decisions of the World Court* (2010), *supra* note 1, at 179-180 at <http://www.brill.nl/decisions-world-court-relevant-un-convention-law-sea>.

some other institutions with a view to predicting and managing the impacts of the future deep seabed mining.²¹³

In the case of U.S. 200-mile EEZ, which is the largest of any nation in the world and which encompasses some 3,362,600 square miles (more than one-fifth larger than the U.S. land area), only about 20 percent of this area is adjacent to the continental United States (including coasts of the Atlantic, Pacific and the Gulf of Mexico) and as much as 31 percent (over 1 million square miles) surrounds the U.S. insular areas, including the commonwealths of Puerto Rico and the Northern Mariana Islands, the territories of Guam, the Virgin Islands and American Samoa, and the other island possessions (e.g., Johnston Atoll) of the United States.²¹⁴ Large part of these territories is covered by U.S. Marine National Monuments of 500,000 square kilometres (ca. 200,000 square miles), which have been designated by President George W. Bush pursuant to the 1906 Antiquities Act in his Statement and three Proclamations of 6 January 2009, including:

²¹³Reference to the Kaplan Project results from its main funding source, the J.M. Kaplan Fund and Map of CCZ, which may perhaps overlap with Clipperton's and Mexico's 350-mile outer CS at www.isa.org.jm/images/CCZ%20Application%20areas-NOOA.png, http://www.isa.org.jm/files/images/CCZ_contractors-resize2.jpg & <http://www.isa.org.jm/en/scientific/exploration>. See also J.M. van Dyke, J. Morgan and J. Gurish, "The EEZ of the Northwestern Hawaiian Islands: When Do Uninhabited Islands Generate an EEZ?" (1988) 25 *San Diego Law Review* 425, 439-440, 458-459, 465; *Reports of the Meetings of UNCLOS States Parties, New York - 13th Meeting*, 9-13 June, UN Doc. SPLOS/103, para.77 (2003); 14th Meeting, 14-18 June, UN Doc. SPLOS/119, para.65 (2004); 15th Meeting, 16-24 June, UN Doc. SPLOS/135, para.61 (2005); UN ISA Seabed Council Takes Note of Legal and Technical Commission's Report, *Press Release SEA/1840* of 24 August 2005 at www.un.org/News/Press/docs/2005/sea1840.doc.htm and ISA Concludes 11th Session, 15-26 August, *Press Release SEA/1843* of 26 August 2005 at www.un.org/News/Press/docs/2005/sea1843.doc.htm; M.Lodge, "ISA: Current Legal Developments" (2009) 24 *IJMCL* 185, 189-190 at <http://brill.nl/estu>; *Reports of the Meeting of UNCLOS States Parties, New York - 19th Meeting*, 22-26 June, UN Doc. SPLOS/203, paras 58-62 (2009) at www.isa.org.jm/en/ & www.un.org/Depts/los/; 64th UNGA Adopts Two Oceans Resolutions, UN Doc.GA/10899 of 4 December 2009, Statement of ISA Secretary-General Odunton, at 24-25 at www.un.org/News/Press/docs//2009/ga10899.doc.htm; 65th UNGA Adopts Two Oceans Resolutions, UN Doc.GA/11031 of 7 December 2010, listing 123:1:2 vote at 1 and 20 at www.un.org/News/Press/docs//2010/ga11031.doc.htm; 66th UNGA Adopts Two Oceans Resolutions, UN Doc.GA/11185 of 6 December 2011 at <http://www.un.org/News/Press/docs//2011/ga11185.doc.htm>.

²¹⁴D.C. Woodworth, "The Exclusive Economic Zone and the United States Insular Areas: A Case for Shared Sovereignty" (1994) 25 *ODIL* 365-390, specifying, at 366, the areas listed above and noting that the 1983 "President Reagan's Proclamation can be characterized as the largest territorial acquisition in the history of the United States"; 2009 U.S. Fact Sheets on Extended Continental Shelf, and U.S. EEZ and Extended Continental Shelf of 7 June 2011 at <http://www.heritage.org/research/reports/2011/06/un-convention-on-the-law-of-the-sea-erodes-us-sovereignty-over-us-extended-continental-shelf>, <http://continentalshelf.gov/> & <http://continentalshelf.gov/media/ECSposterDec2010.pdf>, *supra* note 22, noting that six areas that "likely" qualify as U.S. Outer CS (ECS) are: off the Atlantic Coast, in the Arctic, in the Bering Sea, west of the Marianas Islands, and two small areas in the Gulf of Mexico. And that nine "possible" Outer CS (ECS) areas include the Gulf of Alaska, the western end of the Aleutian Islands, east of the Mariana Islands, Hawaii's Necker Island, the Johnston Atoll, the Kingman Reef and Palmyra Atoll, and three areas of the U.S. West Coast.

* Rose Atoll Marine National Monument Proclamation referred to above (in the context of Cook Islands/United States (American Samoa Maritime Boundary Treaty), with Rose Atoll possessing the highest proportion of live coral cover anywhere in the world;

* Pacific Remote Islands (or Line Islands) Marine National Monument (extending nearly 2,000 miles and including largely uninhabited Wake, Baker, Howland and Jarvis Islands, Johnston Atoll, Kingman Reef and Palmyra Atoll) Proclamation, with most of these islands and atolls, that were rich in guano (bird and bat droppings) which were used to make fertilizer and gunpowder, having become U.S. territory under the 1856 Guano Islands Act and possessing now a 50-mile zone where fishing and mining is banned and research or recreational fishing are allowed under a permit; and

* Marianas Trench Marine National Monument (including Guam and U.S. Northern Mariana) Proclamation, with Marianas Trench being the deepest (of 11 kilometres or ca. 7 miles) area of ocean on the planet (deeper than Mount Everest is tall).²¹⁵

While representing the largest marine conservation effort in history, the three U.S. Monuments also preserve U.S. military activities and the critical high seas navigational freedoms (*jus communicationis*), including measures to uphold training missions and other military operations enhancing global mobility of U.S. Armed Forces, which are essential to the peace and prosperity of civilized nations.²¹⁶

Within the 2009 U.S. Marianas Trench Marine National Monument referred to above, the large volcanic Guam Island (of 541 square kilometres) is sandwiched between Micronesia²¹⁷ and U.S. Marianas²¹⁸ and it hosts one of the most strategically important U.S.

²¹⁵Announcement of U.S. President G.W. Bush on Three U.S. Marine National Monuments of 6 January 2009 at www.whitehouse.gov/news/releases/2009/01/20090106-4.html; Statement of President G.W. Bush at www.whitehouse.gov/news/releases/2009/01/20090106-9.html; Monumental Proclamations of President Bush of 5/6 January 2009 at www.washingtontimes.com/news/2009/jan/06/bush-set-to-protect-pacific-islands, <http://news.bbc.co.uk/2/hi/science/nature/7812786.stm>, www.iht.com/articles/2009/01/06/america/06oceans.php, www.nytimes.com/2009/01/06/us/06oceans.html, www.timesonline.co.uk/tol/news/environment/article5456232.ece & <http://edition.cnn.com/2009/TECH/01/06/bush.conservaion/index.html>. On the 2009 U.K. Chagos Marine Reserve and 2010 BIOT Marine Protected Area, see *infra* notes 283, 293-294.

²¹⁶In addition to principles reaffirmed in the 2009 U.S. Statement itself, each of The Three Pacific Monuments has the same "Armed Forces Actions" Section. See Chris Rahman [crahman@uow.edu.au] & Martin Tsamenyi, "A Strategic Perspective on Security and Naval Issues in the South China Sea" (2010) 41 *Ocean Development & International Law* (ODIL) 315-333; B. Kwiatkowska, "Military Uses in the EEZ - A Reply to A.V. Lowe" (1987/3) 11 *Marine Policy* 249-250 and "Innocent Passage by Warships: A Reply to Professor Juda" (1990/1) 21 ODIL 111-116 and (1990/3) 21 ODIL 447-450 at <http://catalogue.ppl.nl/DB=1/SET=5/TTL=1/CMD?ACT=SRCHA&IKT=1016&SRT=YOP&TRM=Kwiatkowska>; and literature quoted *supra* note 5.

²¹⁷On Micronesia, see *infra*.

bases in the Pacific.²¹⁹ By contrast to Guam of which full island status could not be doubted, U.S. islands in the Pacific potentially raising doubt as to their such status are Swains referred to earlier and four uninhabited, small islands, which supported guano prospecting in the past, form presently a part of U.S. National Wildlife Refuge system and are involved in maritime delimitation between the United States and Kiribati - Baker Atoll (of 1.64 square kilometres, but surrounded by 123.45 square kilometres of submerged land) which lies 1,675 miles south-west of Honolulu and hosts Coast Guard Long Range Aid to Navigation (LORAN) station; Howland Island (1.5 miles long and a half mile wide) which lies about 90 miles north of Baker; Jarvis Island (of 4.5 square kilometres) and Palmyra Islands, consisting of some 50

²¹⁸On Note Verbale of the United States of 22 December 2008 stating that in areas from Haha Shima and Minami-Tori Shima Islands, the CLCS Recommendations on Japan's 2008 Submission will be without prejudice to the U.S. outer CS limit and to Japan/U.S. Northern Marianas outer CS boundary delimitation, see www.un.org/Depts/los/clcs_new/submissions_files/submission_jpn.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* notes 157, 161. On outer CS cruises to Northern Marianas and Guam (2006, 2007, 2010), see *Defining the Limits of the U.S. Continental Shelf*, p.2 at www.state.gov/e/oes/continentalshelf/index.htm, and U.S. EEZ and Extended Continental Shelf of 7 June 2011, pp.5-6, noting “likely” Outer CS (ECS) west of the Mariana Islands and “possible” Outer CS east of the Marianas at <http://www.heritage.org/research/reports/2011/06/un-convention-on-the-law-of-the-sea-erodes-us-sovereignty-over-us-extended-continental-shelf>, *supra* notes 22 & 214.

²¹⁹Guam at www.cia.gov/cia/publications/factbook/print/gq.html, www.dfat.gov.au/geo/guam/, www.wikinfo.org/wiki.php?title=Guam, <http://islands.unep.ch/CLI.htm> & <http://islands.unep.ch/ILI.htm>, noting that Chinese vessels were believed to be mapping the seabed near Okinotorishima Islands over which American warships might pass on their way from Guam to Taiwan; Japan/USA Agreement on Relocation of U.S. Troops from Okinawa to Guam of 30 October 2005 at <http://usinfo.state.gov/usinfo/Archive/2005/Oct/30-639026.html> & www.usatoday.com/news/world/2005-10-29-okinawabases_x.htm; Resolution of U.S. Troops Relocation of 24 April 2006 at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4937494.stm> & 1 August 2006 at www.usatoday.com/news/world/2006-08-01-japan-military_x.htm?csp=34 and Okinawa's 2006 Year in Review of 3 January 2007 at www.estripes.com/article.asp?section=104&article=41479&archive=true; 63rd UNGA Statements on Guam of 7 October 2008 at www.un.org/News/Press/docs/2008/gaspd397.doc.htm and 10 October 2008, pp.4-5 at www.un.org/News/Press/docs/2008/gaspd400.doc.htm; 2009 U.S. Marianas Trench Monument (including Guam and U.S. Northern Marianas), *supra* note 215; Guam Braces for Military Buildup of 19 January 2010 at <http://www1.voanews.com/english/news/asia/Guam-Braces-for-Military-Buildup-82048832.html>; No Easy Answers in Okinawa US Base Debate of 30 March 2010 at <http://news.bbc.co.uk/2/hi/asia-pacific/8574208.stm>; Clive Schofield, Andi Arsana & Robert van de Poll, “The Outer Continental Shelf in the Asia-Pacific Region”, in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) Figure 29.4 at 551; The Question of Guam of 4 October 2011 at <http://www.un.org/News/Press/docs/2011/gaspd479.doc.htm>; Okinawa U.S. Base Relocation Debate of 9 January 2012 at <http://www.bbc.co.uk/news/world-asia-16954599> & <http://www.voanews.com/english/news/asia/Controversial-Approach-to-Break-Okinawa-Marine-Transfer-138858399.html>. On outer CS cruises to Northern Marianas and Guam (2006, 2007, 2010), see *Defining the Limits of the U.S. Continental Shelf*, p.2 at www.state.gov/e/oes/continentalshelf/index.htm, *supra* note 22.

sand and rock-reef islets (of one square mile).²²⁰ All these potential Article 121(3) rocks, along with Wake Island, Johnston Atoll and Kingman Reef are covered by the 2009 U.S. Pacific Remote Islands Marine National Monument referred to above.

Federated State of Micronesia was expressly referred to in Palau's 2009 Submission to the CLCS, which stated in Section 5 on Outstanding Maritime Delimitations that this Submission does not prejudice the future Palau/Micronesia Outer CS Beyond 200 Miles Delimitation Agreement and any other such Agreements between Palau/Indonesia, Palau/Philippines and Palau/Japan(Okinotorishima).²²¹ Micronesia also joined Papua New Guinea and Solomon Islands in their 2009 Joint Partial Submission covering enormous Ontong Java Plateau which is surmounted by islands of Micronesia (Kapingamarangi) in the northwest, Papua New Guinea (Nuguria, Kilinailou, Tauu and Nukumanu Islands) in the southwest and south, and the Solomon Islands (Lord Howe - Ontong Java Atoll, Obelisk, Anuta and Stewart Islands) in the south and southeast; this Micronesia/Papua New Guinea/Solomon Islands' 2009 Joint Submission was paralleled by Micronesia's 2009 Preliminary Partial and Papua New Guinea's 2009 Preliminary Partial Submissions which both concern Mussau Ridge and Eauripik Rise located between these two states (with Eauripik Rise also overlapping with Indonesia's future Submission), and by Solomon Islands' 2009 Preliminary Submission on outer CS beyond 200 miles in respect to a high seas

²²⁰Swain and Rose Islands, *supra* notes 135, 202, 215; Baker at www.wikinfo.org/wiki.php?title=Baker_Island; Howland at http://en.wikipedia.org/wiki/Howland_Island; Jarvis at http://en.wikipedia.org/wiki/Jarvis_Island; Palmyra at http://en.wikipedia.org/wiki/Palmyra_Island; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) Figure 29.7 at 556. On proposal to add these 4 islands to the State of Hawaii, see *infra* note 225. On Kiribati's CLCS deadline scheduled for February 2013, see main text at *supra* note 205. On outer CS cruises to Kingman Reef and Palmyra Atoll (2010), see Defining the Limits of the U.S. Continental Shelf, p.2 at www.state.gov/e/oes/continentalshelf/index.htm; and on "possible" Outer CS (ECS) of Hawaii's Necker Island, see U.S. EEZ and Extended Continental Shelf of 7 June 2011 at <http://www.heritage.org/research/reports/2011/06/un-convention-on-the-law-of-the-sea-erodes-us-sovereignty-over-us-extended-continental-shelf>, *supra* notes 22 & 214.

²²¹Palau's 2009 Submission to the CLCS, Section 5: Outstanding Maritime Delimitations at www.un.org/Depts/los/clcs_new/submissions_files/submission_plw_41_2009.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm, quoted *supra* notes 161 & 182; Palau/Micronesia Maritime Boundaries Treaty of 5 July 2006, ASIL/IMB, Vol.VI (2011), Report No.5-31 (McDorman and Schofield), at 4348 at <http://www.brill.nl/international-maritime-boundaries-2>; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) Figure 29.4 at 551.

enclave at the junction of Solomon Islands/Papua New Guinea/Australia EEZs.²²² All these Submissions specified that they were made without prejudice to the outer CS delimitations and to any other maritime delimitations between each of these submitting states and any other coastal state.

The two of U.S. states - Alaska and Hawaii both have gigantic EEZs, of which each is larger than the entire EEZ area adjacent to the contiguous 48 states, which area may still be expanded by extension of the U.S. outer continental shelf beyond 200 miles.²²³ The legal nature of Northwestern Hawaiian islands, rocks, atolls and reefs, which generate an EEZ of 587,282 square miles in total, was surveyed by Jon M. van Dyke, Joseph Morgan and Jonathan Gurish, who suggested several classifications depending on the seize and present and past capacity of various Hawaiian features to sustain population, including military personnel. Were only the presently inhabited islands to fall within UNCLOS Article 121(2) ambit, they would include Kure Atoll (with a diameter of 4.5 miles, comprising Green and Sand) which possesses LORAN station manned by personnel of 25, Tern Island supporting very limited research presence (in French Frigate Shoals) and Midway Atoll (comprising Eastern and Sand of 5.2 square miles in total) whose population of military and civilian personnel of 260 was evacuated in 1993 when Naval Air Facility was closed and when Midway Atoll (being formally a federal territory and not part of the State of Hawaii) was declared one of the world's most spectacular wildlife reserves that was opened to tourists in mid-2007; all the other features (Nihoa, Necker, La Perouse Pinnacle, Gardner Pinnacles, Maro Reef, Laysan, Lisianski, Pearl and Hermes Atoll) could pursuant to Article 121(3) not generate EEZ/CS, even though barren rocks Nihoa (0.8 miles long and 0.2 miles wide) and Necker (1.7 miles long and less than 0.2 miles wide) were inhabited by ancient Hawaiian

²²²Micronesia/Papua New Guinea/Solomon Islands' 2009 Joint Partial(Ontong Java Plateau) Submission , Section 5: Outstanding Maritime Delimitations, stating that this Joint Submission is without prejudice to delimitation of boundaries of the three coastal states and any other state(s) [Tuvalu, Kiribati, Nauru, Marshall Islands] at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_fmngsb_32_2009.htm & http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Micronesia's 2009 Preliminary Partial (Eauripik Rise and Mussau Ridge) Submission, paras 5-6, 9 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/fsm_preliminaryinfo.pdf; Micronesia/Marshall Islands Maritime Boundaries Treaty of 5 July 2006, in: ASIL/IMB Vol.VI (2011), Report No.5-28 (McDorman and Schofield), at 4316 at <http://www.brill.nl/international-maritime-boundaries-2>; Papua New Guinea's 2009 Preliminary Partial (Mussau Ridge and Eauripik Rise) Submission, paras 5-6, 8 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/png_preliminaryinfo.pdf; and Solomon Islands'2009 Preliminary Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/slb_preliminaryinfo.pdf, www.un.org/Depts/los/clcs_new/commission_preliminary.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; Clive Schofield, Andi Arsana & Robert van de Poll, "The Outer Continental Shelf in the Asia-Pacific Region", in: D. Vidas (ed.), *Law, Technology and Science for Oceans in Globalisation* (2010) 551 [Figure 29.4], 557 [Micronesia/Papua New Guinea/Solomon Islands 2009 Joint Partial Submission], 564 [Solomon Islands'2009 Preliminary Submission], 564-565 [Papua New Guinea's 2009 Preliminary Partial Submission], 565 [Micronesia's 2009 Preliminary Partial Submission]; and *supra* note 3. On involvement of Nauru in the 2011 ITLOS Deep Seabed Chamber's Advisory Opinion, see excellent Case Report by this *Journal's* Editor-in-Chief, Prof. David Freestone (2011) 105 AJIL 755-760, esp. 755-756. On Indonesia's Submissions, see *supra* note 181.

²²³See Woodworth, *supra* note 214, at 366.

people in the past, and sandy Laysan (1.6 miles long and 1 mile wide) and Lisianski (1.2 miles long and half-a-mile wide) supported very small populations during guano periods.²²⁴

However, in view of the consistent position taken by the United States in its legislative and treaty practice that all these insular features do generate full 200-mile EEZ, Jon van Dyke refocused his attention from analyzing whether they fall within disqualifying ambit of Article 121(3) into emphasizing the principal importance of resource and environmental issues covered by the Western Pacific Regional Fishery Management Council (established under the 1976 U.S. Fisheries Act), the Hawaiian Marine Mineral Joint Planning, the Hawaiian Islands National Wildlife Refuge, the 50-Mile IMO Area to be Avoided, the Humpback Whale National Marine Sanctuary and the historic claims of Native Hawaiians (Kanaka Maoli) to the coastal waters surrounding all the features of Northwestern Hawaiian chain referred to above and the eight Hawaiian main islands (Hawaii, Maui, Kaho'olawe, Lanai, Molokai, Oahu, Kauai and Niihau), which were proposed to be still extended to the widely scattered Pacific islands of Baker, Howland, Jarvis and Palmyra, as well as to Midway Atoll, Kingman Reef and Wake Island, and which were subsequently all covered by the 2009 U.S. Pacific Remote Islands Marine National Monument (of Three U.S. Marine National Monuments) referred to above.²²⁵ The Native Hawaiians have also made such historic claims to the resources of the ocean areas around Johnston Atoll (of 2.8 square miles), situated 717 miles south-west of Honolulu (about one-third of the way from Hawaii to the Marshall Islands) and comprising 4 small islets, of which Johnston Island was expanded from 46 to 625 acres by coral dredge and fill operations (and is now 2 miles long and half-a-mile wide),

²²⁴J.M. van Dyke, J. Morgan and J. Gurish, "The EEZ of the Northwestern Hawaiian Islands: When Do Uninhabited Islands Generate an EEZ?" (1988) 25 *San Diego Law Review* 425, 466-494; Hawaiian Islands at www.wikinfo.org/wiki.php?title=Hawaiian_Islands, noting that Northwestern Hawaiian Islands extend about 1,000 miles north-west of the 8 main Hawaiian Islands; Midway Atoll at www.wikinfo.org/wiki.php?title=Midway_Islands & www.fws.gov/pacific/midway/intro/default.htm; U.S. Will Open Midway Atoll to Tourists of 26 November 2006 at www.iht.com/articles/2006/11/26/new/travel27.php. On outer CS cruises to Hawaii (2009) and U.S. West Coast/Pacific Ocean (2009), see Defining the Limits of the U.S. Continental Shelf, p.2 at www.state.gov/e/oes/continentalshelf/index.htm. On "possible" Outer CS (ECS) of the Kingman Reef and Palmyra Atoll, see U.S. EEZ and Extended Continental Shelf of 7 June 2011 at <http://www.heritage.org/research/reports/2011/06/un-convention-on-the-law-of-the-sea-erodes-us-sovereignty-over-us-extended-continental-shelf>, *supra* notes 22 & 214.

²²⁵J.M. van Dyke, "An Overview of the Jurisdictional Issues Affecting Hawaii's Ocean Waters" (1996) 11 *IJMCL* 351-363 at <http://brill.nl/estu/> and Three U.S. Marine National Monuments, *supra* note 215. On extension of the State of Hawaii to Baker, Howland, Jarvis and Palmyra, see *id.*, at 355; *supra* note 220. See also Rights of Indigenous People Should Be Integrated Into Development Strategies of 22 October 2004 at www.un.org/News/Press/docs/2004/gashc3790.doc.htm; OAS American Declaration on the Rights of Indigenous Peoples of 16 March 2006 at www.oas.org/OASpage/press_releases/press_release.asp?sCodigo=E-062/06; UNGA Declaration on Rights of Indigenous People of 13 September 2007 at www.un.org/apps/news/story.asp?NewsID=23794&Cr=indigenous&Cr1 & www.un.org/News/Press/docs//2007/ga10612.doc.htm and (2007) 101 *AJIL* 884-885; *Report on Jurisprudence Concerning Indigenous Fishing Rights in the Seas with Case Studies from Australia and Norway*, UN Doc. E/C.19/2010/2 (8 January 2010); UN Press Conference on Indigenous People of 19 May 2011 at http://www.un.org/News/briefings/docs/2011/110519_Indigenous.doc.htm.

Sand Island was increased from 10 to 22 acres in area, and two new Akau and Hikina islets (of 25 and 18 acres) were added as a result of coral dredging, and which in continuation of various military uses retired in 1975, has been used since 1990 as the Johnston Atoll Chemical Agent Disposal System (JACADS, located totally on fill material), co-existing with U.S. National Wildlife Refuge system monitoring the aquatic life in and around the Johnston Atoll and the 2009 U.S. Pacific Remote Islands Marine National Monument.²²⁶ Previously, the U.S. President's Proclamation on 50-Mile U.S. Northwestern Hawaiian Islands Marine National Monument of 15 June 2006, covering a total area of about 140,000 square miles (i.e., about the size of Germany), provided for future cooperation with other governments and international organizations and stipulated that no restrictions are to be enforced against foreign-flag vessels "unless in accordance with international law"²²⁷ as was endorsed under the 2008 IMO Papahānaumokuākea Particularly Sensitive Area (PSSA).²²⁸

²²⁶Van Dyke, "An Overview" (1996), *supra* note 225 at 362; J.M. van Dyke, T.N. Pettit, J. Cook Clark and A.L. Clark, "The Legal Status of Johnston Atoll and Its Exclusive Economic Zone" (1988) 10 *University of Hawaii Law Review* 183-194; J.M. van Dyke, "Protected Marine Areas and Low Lying Atolls" (1991) 16 *Ocean & Shoreline Management* 87-160, esp. 117-124, quoted, in: *New Zealand v. France Nuclear Tests Hearings*, CR 95/19, 7-71 [Counsel Sir Eli Lauterpacht, 11 September 1995] and CR 95/20 [transl.], 50-51 [Agent de Brichambaut, 12 September 1995] at www.icj-cij.org/; Sir Elihu Lauterpacht CBE QC, "The 1972-1974 and 1995 Nuclear Tests Cases", in: *Nuclear Weapons in International Law and Politics* (BIICL London, 16 March 2007) at www.biicl.org/files/2593_16th_march_programme.pdf & www.biicl.org/events/view/-/id/137; Johnston Atoll at www.wikinfo.org/wiki.php?title=Johnston_Atoll & www.astronautix.com/sites/johsland.htm; 2009 U.S. Pacific Remote Islands Marine National Monument (covering Johnston Atoll), *supra* notes 215-220; and U.S. EEZ and Extended Continental Shelf of 7 June 2011, noting "possible" Outer CS (ECS) east of Johnston Atoll at <http://www.heritage.org/research/reports/2011/06/un-convention-on-the-law-of-the-sea-erodes-us-sovereignty-over-us-extended-continental-shelf>, *supra* notes 22 & 214.

²²⁷Northwestern Hawaiian Islands State Marine Refuge of 29 September 2005, communicated in e-mail from Professor Jon van Dyke to the author of 4 November 2005 (on file with the author); Proclamation of U.S. President George W. Bush on 50-Mile Northwestern Hawaiian Islands Marine National Monument of 15 June 2006, Federal Register 71, 36,441, *reprinted in* White House Press Release of 15 June 2006 at www.whitehouse.gov/news/releases/2006/06/20060615-18.html, as preceded by the original Hawaiian Islands Reservation established by President Theodore Roosevelt for bird conservation in 1909 and expanded into a Coral Reef Ecosystem Reserve by President Clinton under Executive Orders 13178 (4 December 2000, 65 Fed. Reg. 76903) and 13196 (23 January 2001, 66 Fed. Reg. 7395). See also the ensuing President G.W. Bush's Statement on Advancing U.S. Interests in the World's Oceans of 15 May 2007 at www.whitehouse.gov/news/releases/2007/05/20070515-2.html & www.asil.org/ilib070522.cfm, *supra* note 5.

²²⁸The 2008 IMO PSSA is referred to, in 2009 U.S. Statement on Three Pacific Proclamations at www.whitehouse.gov/news/releases/2009/01/20090106-9.html, *supra* note 215. On the 2006 Northwestern Hawaiian Islands Marine National Monument applying for status of the UNESCO World Heritage Site, see 2009 U.S. Announcement on The Three Pacific Monuments at www.whitehouse.gov/news/releases/2009/01/20090106-4.html and UNESCO World Heritage List at <http://whc.unesco.org/en/list>.

Submissions in South Asia and the Middle East

Bangladesh, Myanmar, India

Within the Bay of Bengal, Sri Lanka and mainland India, Bangladesh, Myanmar, India's Andaman Islands and Indonesia's Sumatra are the coastal territories in opposite as well as the adjacent positions. The first Submission in this region was filed with the CLCS by Myanmar on 16 December 2008 during its increased hostilities with Bangladesh. This was followed by Partial (Bay of Bengal-Andamans-Arabian Sea) Submission of India of 11 May 2009 and by protests of Bangladesh against the 2008 Myanmar's (23 July 2009) and the 2009 India's (29 October 2009) Submissions. India, which belongs to the 15 states possessing the largest EEZs worldwide, is one of the seven Deep Seabed Pioneer Investors and is expected to gain additional 1.5 million square kilometres of the outer continental shelf beyond 200 miles. On 8 October 2009 Bangladesh's Applications have initiated two UNCLOS Annex VII *Bangladesh/Myanmar* and *Bangladesh/India Bay of Bengal Maritime Delimitation* Arbitrations. The *Bangladesh/Myanmar* case was re-channelled in December 2009 to the ITLOS as its Case No.16 and Annex VII *Bangladesh/India* Arbitration was established by December 2010 as the ITLOS-dominated PCA Arbitral Tribunal. Subsequently, Bangladesh, which as noted above, protested Submissions of both Myanmar and India, filed its own Submission with the CLCS on 25 February 2011.

In parallel to Bangladesh/Myanmar maritime delimitation negotiations, which had aggravated to the deployment of naval vessels on 4-9 November 2008 and which ended inconclusively on 18 November 2008, Myanmar filed with the CLCS on 16 December 2008 its Submission (Rakhine Continental Shelf) on the outer CS beyond 200 miles pursuant to UNCLOS Article 76 and Annex II on the Southern Bay of Bengal of UNCLOS III Final Act; while Myanmar's Submission did not acknowledge the existence of any dispute between Myanmar and any other states, the Submission noted that pursuant to UNCLOS Article 76(10), it was without prejudice to the ongoing negotiations on the Bangladesh/Myanmar

boundary and the 1986 India/Myanmar Treaty on Delimitation of Maritime Boundary in the Andaman Sea, in the Coco Channel and in the Bay of Bengal.²²⁹

India's Note Verbale of 26 March 2009 on Myanmar's 2008 Submission (Rakhine Continental Shelf) stressed that the extension of the maritime boundary under the 1986 Treaty beyond Point 16 in the Bay of Bengal had not been completed and, therefore, Myanmar's Submission remained without prejudice to the future mutual agreement of the parties on that boundary.²³⁰ Myanmar reciprocated in its Note Verbale of 4 August 2009 on the ensuing India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission, where Myanmar expressed the hope that India's application of provisional equidistant boundaries did not prejudice the future extension of the maritime boundary under India (Andaman Islands)/Myanmar Treaty beyond Point 16.²³¹ It can be noted that under the 1986 India (Andaman Islands)/Myanmar Maritime Boundary Delimitation Treaty, recognition of India's sovereignty (previously disputed by Myanmar) over Narcondam Islet (3 by 4 kilometres and 710 metres high), on which a 100 year dormant volcano erupted in June 2005 as a result of the Indian Ocean Tsunami, was coupled with discounting in the construction of an equidistant boundary of both Narcondam and another uninhabited Barren Island (of 10 square kilometres and 354 metres high), likely because these two rocks are situated as far as 57 and 70 miles away from the main 352 kilometres long Andamans (of 550 islands of which only 26 are

²²⁹Myanmar's 2008 Submission (Rakhine Continental Shelf), Section IV: Relevant Maritime Delimitations; Notes Verbales of Sri Lanka of 2 March 2009 (on Annex II of UNCLOS III Final Act), India of 26 March, Kenya of 30 April (on Annex II of UNCLOS III Final Act) and Bangladesh of 23 July 2009, with India and Bangladesh also contesting Myanmar's reliance on Annex II of UNCLOS III Final Act [*supra* note 20, as further discussed below] at www.un.org/Depts/los/clcs_new/submissions_files/submission_mmr.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; Statement by the CLCS Chairman, UN Doc. CLCS/64 (1 October 2009) at www.un.org/Depts/los/; *supra* note 3. See also Bangladesh/Myanmar on Alert of 5 November 2008 at http://news.bbc.co.uk/2/hi/south_asia/7710643.stm; 9 November 2008 at www.bangladesh-web.com/view.php?hidRecord=230316; 12 November at www.bangladesh-web.com/view.php?hidRecord=230929; Talks Inconclusive of 18/20 November 2008 at www.bangladesh-web.com/view.php?hidRecord=232032 & http://atimes.com/atimes/Southeast_Asia/JK20Ae01.html; Myanmar's Submission to the CLCS of 16 December 2008, *supra*; India/Bangladesh/Myanmar Boundary Delimitation of 5 February 2009 at www.bangladesh-web.com/view.php?hidRecord=245284; *supra* note 3. On Annex II on the Southern Bay of Bengal of UNCLOS III Final Act, see next section in this article below.

²³⁰*Id.*, India's Note Verbale of 26 March 2009 on Myanmar's 2008 Submission (Rakhine Continental Shelf) at http://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/clcs16_2008_ind_e.pdf, www.un.org/Depts/los/clcs_new/submissions_files/submission_mmr.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm and the 1986 India (Andaman Islands)/Myanmar Treaty *infra*.

²³¹Note Verbale of Myanmar of 4 August 2009 on India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission, Section V: Relevant Maritime Delimitations at http://www.un.org/Depts/los/clcs_new/submissions_files/ind48_09/clcs_48_2009_los_mmr.pdf & www.un.org/Depts/los/clcs_new/submissions_files/submission_ind_48_2009.htm, quoted *infra*. On projected extension of the equidistance drawn by the 1974-1977 India(Southern Nicobar Islands)/Indonesia (Sumatra) Continental Shelf Agreements, which gave full effect to all islands and rocks, see Notes Verbales of India of 25 March 2009 and Indonesia of 30 April 2009 on Indonesia's 2008 Partial (North West of Sumatra) Submission, Section 2 and Section 5: Absence of Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_idn.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm, *supra* note 181.

inhabited), forming part of India's Union Territory of Andaman and Nicobar Islands.²³² Both off-lying Andaman and Nicobar Islands (forming a Union Territory of India to which access is requires a special permit) were enclosed by India with archipelagic baselines from which it extended their 200-mile zone under India's 1976 Territorial Sea and the EEZ/CS Act.²³³

In December 2008, India resumed its first initiated in November 2006 request to the Navy and Coast Guard to scan the 1,200 uninhabited islands, islets and rocks, scattered over the Arabian Sea and the Bay of Bengal and also near Andaman and Nicobar Islands in the east and Lakshadweep in the west, amid worries that Pakistan could base deep-sea divers and marine jihadis on these rocks before moving them to India's mainland; India has envisaged 73 new coastal police stations, 97 checkpoints and 58 outposts by March 2009 with a view to reducing vulnerability of these tiny islands and rocks to their use by terrorists and pirates.²³⁴ For this reason, having issued its Baselines Notification of 11 May 2009, India also decided in

²³²1986 India (Andaman Islands)/Myanmar Treaty, in: ASIL/IMB Vol.II (1993), Report No.6-3, at 1329-1340 at <http://www.brill.nl/international-maritime-boundaries-3>; 1993 India/Myanmar/Thailand Agreement (defining their tripoint), in: ASIL/IMB Vol.III (1998), Report No.6-3/Add.1, at 2369-2376 at [http://www.brill.nl/international-maritime-boundaries-0](http://www.brill.nl/international-maritime-boundaries-0;); (1988) 27 ILM 1144 & <http://faolex.fao.org/docs/pdf/ind5123.pdf>; Andaman Islands at http://en.wikipedia.org/wiki/Andaman_Islands; Narcondam (Pit of Hell) at http://en.wikipedia.org/wiki/Narcondam_Island & www.volcanodiscovery.com/volcano-tours/657.html; Barren Island at http://en.wikipedia.org/wiki/Barren_Island_%28Andaman_Islands%29 & www.volcanodiscovery.com/volcano-tours/volcano_news/indian_ocean/andaman_islands/barren/eruption_update.html; High Earthquake Alert in Andaman and Nicobar Islands of 17 July 2006 at www.outlookindia.com/pti_news.asp?id=399442; Sri Lanka to Merge with Andaman Islands of 5 November 2009 at www.dailynews.lk/2009/11/05/news51.asp.

²³³Andaman Islands at http://en.wikipedia.org/wiki/Andaman_Islands, noting that Andaman Group is 352 kilometres long and consists of 550 islands, of which 26 are inhabited, including the 5 chief islands (Great Andaman); Nicobar Islands at http://en.wikipedia.org/wiki/Nicobar_Islands, noting that Nicobars consist of three groups: Northern Group - Car Nicobar (127 square kilometres) and uninhabited Batti Malv (2 square kilometres); Central Group - Chowra (8 square kilometres), Teressa (101 square kilometres), Poahat (13.3 square kilometres), Katchal (174 square kilometres), Camorta (188 square kilometres), Nancowry (67 square kilometres) and Trinket (86 square kilometres) and the uninhabited Isle of Man and Tillangchong (17 square kilometres) being a wildlife sanctuary; Southern Group - Great Nicobar (1,045 square kilometres), Little Nicobar (157 square kilometres), Kondul (4 square kilometres) and Pulomilo (1 square kilometres); and the uninhabited islets of Meroe, Trak, Treis, Menchal, Cubra, Pigeon and Megapod (being a wildlife sanctuary); Growth of India's Naval Power of 19 October 2005 at www.atimes.com/atimes/South_Asia/GJ19Df03.html; India Sets Up Coast Guard Station at Andaman and Nicobar Islands of 28 January 2010 at www.bernama.com/bernama/v5/bm/newsworld.php?id=471922.

²³⁴Scan Barren Islands for Laskhar-e-Taiba (LeT) and Jaish-e-Mohammed (JeM) Presence of 6 December 2008 at http://economictimes.indiatimes.com/News/PoliticsNation/Scan_barren_islands_for_LeT_JeM_presence/rssarticle/show/3800295.cms; Mumbai Terrorist Attacks of 29 November 2008 at http://news.bbc.co.uk/2/hi/south_asia/7756073.stm; 4 December at www.state.gov/secretary/rm/2008/12/112752.htm; 10 December 2008 at www.cnn.com/2008/WORLD/asiapcf/12/10/pakistan.mumbai.arrests/index.html.

early 2010 to fit all lighthouses along its 7,516 kilometres-long coastline with radars, cameras and AIS system and to set up Coast Guard station on the Andaman and Nicobar Islands.²³⁵

Apart from India's Note Verbale of 26 March 2009 referred to above, Myanmar's 2008 Submission (Rakhine Continental Shelf) was also commented upon in Bangladesh's Note Verbale of 23 July 2009, which contested Myanmar's view that it had no disputes with any other states; Bangladesh's Note ascertained that unresolved boundary delimitation in the Bay of Bengal and straight baselines claimed by Myanmar in 2008 for the Preparis and Coco Islands and along the coast of Myanmar up to Oyster Island, as protested by Bangladesh in 2009, do qualify as disputes for the purposes of UNCLOS Article 76(10) and Rule 46 and Annex I of the CLCS Rules of Procedure.²³⁶ According to Bangladesh, Myanmar's claim to a natural prolongation of its landmass through to the outer edge of the Rakhine Continental Margin on the basis of morphology, geology and tectonics was not supported by persuasive morphological, geological or tectonic evidence.

In its 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission, India informed the CLCS that it was without prejudice to still outstanding maritime delimitations between India/Pakistan and India/Oman in the Arabian Sea, as further discussed in the next section below, and between Bangladesh/India/Myanmar in the Bay of Bengal, pending resolution of which delimitations, there applied provisional equidistant boundary lines

²³⁵India's Notification on Baselines System: West Coast, East Coast, Andamans & Nicobars, and Lakshadweep Islands of 11 May 2009, *UN Law of the Sea Bulletin* 26-31 (2010 No.71) and its Corrigendum, *UN Law of the Sea Bulletin* 80 (2010 No.72) at www.un.org/Depts/los/; India Sets Up Coast Guard Station at Andaman and Nicobar Islands of 28 January 2010 at www.bernama.com/bernama/v5/bm/newsworld.php?id=471922; India's Coast Guard to Fit All Lighthouses with Radars of 28 January 2010 at: www.bernama.com/bernama/v5/bm/newsworld.php?id=471922 & <http://english.people.com.cn/90001/90777/90851/6882018.html>; USA/India Counter-Terrorism of 19 July 2011 at <http://www.bbc.co.uk/news/world-south-asia-14182709> & <http://www.voanews.com/english/news/asia/Clinton-Says-US-India-United-in-Terror-Fight-125797003.html>. For practice of other states in erecting facilities on potential UNCLOS Article 121(3) rocks, see *supra* notes 163-166, 187-188.

²³⁶Bangladesh's Note Verbale of 23 July 2009 on Myanmar's 2008 Submission (Rakhine Continental Shelf) at http://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/clcs16_2008_mmr_bgd_e.pdf, www.un.org/Depts/los/clcs_new/submissions_files/submission_mmr.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm, *supra* note 229; and Bangladesh's Note Verbale of 6 July 2009 on Myanmar's Baselines, *UN Law of the Sea Bulletin* 61 (2009 No.70). See also Bangladesh's Submission to the CLCS of 25 February 2011, Section 5: Settled and Outstanding Delimitations at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_bgd_55_2011.htm, quoted *infra*.

between those states.²³⁷ Myanmar's Note Verbale of 4 August 2009 on this India's 2009 Partial Submission hoped that India's application of provisional equidistant boundaries did not prejudice future extension of the maritime boundary under the 1986 India (Andaman Islands)/Myanmar Treaty beyond Point 16.²³⁸

The Note Verbale of Bangladesh of 29 October 2009 on India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission rejected [similarly like did Bangladesh's Note Verbale of 23 July 2009 on Myanmar's 2008 Submission discussed above] not only all the delimitations claimed by India in the Bay of Bengal, but also India's proposed straight baselines, which, in Bangladesh's view, were inconsistent with the UNCLOS and general international law.²³⁹ Initiation by Bangladesh's Applications of 8 October 2009 of the two Annex VII *Bay of Bengal* Arbitrations against Myanmar and India leaves no doubt that there exist disputes between each of these two respondents and Bangladesh and that, therefore, the CLCS was requested to consider Submissions of these states without prejudice to resolution of their disputes.²⁴⁰ Also, according to Bangladesh's Note Verbale, India's claim to a natural prolongation of its landmass through to the outer edge of the Bay of Bengal sector and the Western Andamans sector was not supported by morphological, geological or tectonic evidence.

The Bangladesh/India dispute involves uninhabited South Talpatty/New Moore (or Purbasha) Island (of about 2 square miles, though reportedly growing in size), which newly

²³⁷India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission, Section V: Relevant Maritime Delimitations, Notes Verbales of Myanmar of 4 August 2009, *supra* note 231, Bangladesh of 29 October 2009 and Oman of 19 May 2010 at www.un.org/Depts/los/clcs_new/submissions_files/submission_ind_48_2009.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; India Oil in Bay of Bengal of 27 August 2010 at www.rigzone.com/news/article.asp?a_id=98029; *supra* note 3. For provisional application of India/Pakistan equidistance in Pakistan's 2009 Submission, see *infra* notes 269-270. Apart from India/Myanmar boundary, India previously also delimited its other boundaries with Maldives, Sri Lanka, Indonesia and Thailand, to be continued in a follow-up to India's Submissions to the CLCS. For measures concerning India's Union Territory of Andaman and Nicobar Islands, see *supra* notes 232-235.

²³⁸*Id.*, Note Verbale of Myanmar of 4 August 2009 on India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission, Section V: Relevant Maritime Delimitations at http://www.un.org/Depts/los/clcs_new/submissions_files/ind48_09/clcs_48_2009_los_mmr.pdf & www.un.org/Depts/los/clcs_new/submissions_files/submission_ind_48_2009.htm, *supra* notes 230-232.

²³⁹Note that initiative of Bangladesh was instrumental in adopting the new rule of UNCLOS Article 7(2) on straight baselines along unstable coasts, based on experience with the Ganges Delta shared by Bangladesh with India. See *Virginia Commentary* Vol.II, *supra* note 20, at 95-103 [Article 7], as analyzed by A.H.A. Soons, "The Effects of a Rising Sea Level on Maritime Limits and Boundaries" (1990) 37 *Netherlands International Law Review* 207, 208, 211, 219-220.

²⁴⁰Note Verbale of Bangladesh of 29 October 2009 on India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission, Section V: Relevant Maritime Delimitations at http://www.un.org/Depts/los/clcs_new/submissions_files/ind48_09/bgd_re_ind_clcs48_2009e.pdf & www.un.org/Depts/los/clcs_new/submissions_files/submission_ind_48_2009.htm, *supra* note 237. See also Bangladesh's Submission to the CLCS of 25 February 2011, Section 5: Settled and Outstanding Delimitations at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_bgd_55_2011.htm, quoted *infra*. On Annex VII *Bay of Bengal* Arbitrations, of which one was rechannelled into ITLOS, see *infra*.

emerged in 1971 about 4 kilometres south of the mouth of the border Hariabhanga River, has been used seasonally by Bangladesh fishers, and at which - despite a 1980 Bangladesh/India Statement envisaging a joint survey of the location of the thalweg - in 1981 India erected huts, tents, an aerial mast and a pole bearing the Indian flag as protested by Bangladesh; in its 2001 Declaration upon ratification of the UNCLOS, Bangladesh stated that it "does not *ipso facto* imply recognition or acceptance of any territorial claim made by a State party to the Convention, nor automatic recognition of any land or sea border", followed by establishment by India in 2003 of a military base at the South Talpatty/New Moore Island which has been regularly visited by India's warships.²⁴¹ When lines of equidistance are constructed, assuming that the South Talpatty/New Moore Island belongs first to one country and then to the other, it emerges - in the view of Victor Prescott - that it commands about 1,300 square miles, and further seaward the equidistance is driven southeastwards to the Bangladesh/India/Myanmar tripoint, which because of the pending sovereignty dispute, could not yet be determined; since by the application of equidistance (favoured by India) between Bangladesh/India and Bangladesh/Myanmar, Bangladesh would become shelf-locked and unable to claim the full EEZ/CS, Bangladesh has consistently favoured the application of equitable principles and a 10-fathom baseline for the measurement of its EEZ, thereby enclosing hundreds of square miles of shelf within its

²⁴¹*Bay of Bengal Pilot* (Hydrographer of the British Navy, 10th Edition 1978); V.L. Forbes, "The Bay of Bengal Delimitations", including Maps (1988 No.1) 1 *Indian Ocean Review* (formerly *Indian Ocean Newsletter*) 12-13 and "Marine Lines of Allocation in South Asia", including Maps (2000 No.1) 13 *Indian Ocean Review* 16-18; Bangladesh' Declaration of 31 May 2001 upon the UNCLOS' Ratification, *UN Law of the Sea Bulletin* 14 (2001 No.46); Rahul Roy-Chaudhury, "Trends in the Delimitation of India's Maritime Boundaries" (2001) at www.ciaonet.org/olj/sa/sa_99ror01.html & www.neiu.edu (on file with the author); insightful Comments of Former Bangladesh Ambassador to UN Geneva, Harun ur Rashid, Sovereignty over South Talpatty Island of 1 October 2003 at www.thedailystar.net/2003/10/01/d31001020323.htm, noting that the nub of the dispute rests as to whether the main flow of the Hariabhanga River lies to the west (as Bangladesh claims, also arguing that India confuses this main channel with that of inland Raimangal River) or east (as India maintains) of the South Talpatty/New Moore Island; India/Bangladesh Maritime Dispute (2004) at www.bdix.net/sdnbd_org/world_env_day/2004/dispute/alok.htm; V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 282-283 at <http://www.brill.nl/maritime-political-boundaries-world>, maintaining that this Island lies in the estuary of both Hariabhanga and Raimangal Rivers; Bangladesh 2005 at www.cia.gov/cia/publications/factbook/geos/bg.html, noting at 12, that dispute over that island has been deterring delimitation of Bangladesh/India maritime boundary until present; Rivers of Bangladesh at http://en.wikipedia.org/wiki/Rivers_of_Bangladesh and India at http://en.wikipedia.org/wiki/Rivers_of_India.

internal waters.²⁴² In March 2010 the disputed South Talpatty Island was reported to having disappeared.²⁴³

After Myanmar (16 December 2008) and India (11 May 2009) filed their Submissions with the CLCS surveyed above, Bangladesh initiated on 8 October 2009 the two parallel UNCLOS Annex VII *Bay of Bengal* arbitral proceedings against India and Myanmar.²⁴⁴ Eventually, *Bangladesh/Myanmar* case was overtaken by the ITLOS as its Case No.16,²⁴⁵ while Annex VII *Bangladesh/India* arbitration obtained ITLOS membership due to

²⁴²Ambassador Harun ur Rashid, Sea Boundary of Bangladesh of 29 February 2004 at www.thedailystar.net/law/2004/02/04/index.htm; V. Prescott, Indian Ocean Boundaries, in ASIL/IMB Vol.V, 3456-3457 (2005) at [http://www.brill.nl/international-maritime-boundaries;Cdre Md Khurshed Alan, "Legal Analysis of Bay of Bengal Claims \(with Map of equidistance boundaries\)" of 10 June 2006 at www.thedailystar.net/law/2006/06/02/analysis.htm](http://www.brill.nl/international-maritime-boundaries;Cdre Md Khurshed Alan,); Bangladesh's 1974 Territorial Waters and Maritime Zones Act and 1974 Baselines Declaration and Map, showing the 10 fathom and 50 fathom lines at www.un.org/Depts/los/; M.N. Hoque, "The Legal and Scientific Assessment of Bangladesh's Baselines" (UN-The Nippon Foundation 2005-2006) at www.un.org/Depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/hoque_0506_bangladesh.pdf; Bangladesh Gas Blocks in the Bay of Bengal of 14 July 2008 at www.bangladesh-web.com/view.php?hidRecord=210142; Bangladesh's Preparation of Submission to the CLCS by 2011 of 22 July 2008 at www.newstoday-bd.com/metropolis.asp?newsdate; Cdre.Md. Khurshed Alam, Maritime Boundary Dispute and Oil and Gas Exploration in the Bay of Bengal of 2 August 2008 at www.thedaily.star.net/pf_story.php?nid=48489; India/Bangladesh First Territorial and Maritime Negotiations Since 28 Years of 16 September 2008 at www.bangladesh-web.com/view.php?hidRecord=220972 & www.bangladesh-web.com/view.php?hidRecord=221190 and 18 September 2008 at www.bangladesh-web.com/view.php?hidRecord=221537; Asian Roundtable on Bay of Bengal Delimitations of 15 December 2008 at www.thedailystar.net/suppliments/2008/delimitation/index.htm.

²⁴³South Talpatty Island Disappears from India/Bangladesh Bay of Bengal Dispute of 24/25 March 2010 at: http://news.bbc.co.uk/2/hi/south_asia/8584665.stm & <http://www.bangladesh-web.com/view.php?hidRecord=310450> and http://en.wikipedia.org/wiki/South_Talpatty_Island.

²⁴⁴*Bangladesh/India* and *Bangladesh/Myanmar* Applications of Bangladesh Instituting the UNCLOS Annex VII Arbitrations against India and Myanmar of 8 October 2009 at <http://finance.yahoo.com/news/Foley-Hoag-Retained-by-prnews-3825507638.html?x=0&.v=1>, www.bangladesh-web.com/view.php?hidRecord=289186, www.rigzone.com/news/article.asp?a_id=81254 & <http://english.people.com.cn/90001/90777/90851/6778140.html>; as referred to in Bangladesh's Note Verbale of 29 October 2009, para.2(a) on India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission, Section V: Relevant Maritime Delimitations at http://www.un.org/Depts/los/clcs_new/submissions_files/ind48_09/bgd_re_ind_clcs48_2009e.pdf & www.un.org/Depts/los/clcs_new/submissions_files/submission_ind_48_2009.htm, *supra* note 236; UNGA Adopts Two Oceans Resolutions, UN Doc.GA/10899 of 4 December 2009, Statements of Bangladesh and India, at 21-22 at www.un.org/News/Press/docs//2009/ga10899.doc.htm; An Overview of Bay of Bengal Delimitations of 8 November 2009 at <http://drppedia.blogspot.com/2009/11/bangladesh-rejects-indias-all.html>; as further referred to in Bangladesh's Submission to the CLCS of 25 February 2011, Section 5: Settled and Outstanding Delimitations, Section 5.8 (*Bangladesh/India*) & 5.12 (*Bangladesh/Myanmar*) at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_bgd_55_2011.htm, quoted *infra*.

²⁴⁵ITLOS *Bangladesh/Myanmar Bay of Bengal* Case No.16, *Press Release* No.140 of 16 December 2009 at www.itlos.org; Annex VII *Bangladesh/India Bay of Bengal* Arbitration of 1 March 2010 at www.malaysianews.net/story/607142/.

its having been decided - given that the parties could not reach agreement themselves - by the ITLOS President.²⁴⁶

Both Bangladesh's Note Verbale of 23 July 2009 on Myanmar's 2008 Submission and Bangladesh's Note Verbale of 29 October 2009 on India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission discussed earlier assured the CLCS that Bangladesh will make every effort to reach practical arrangements with Myanmar and India that will allow the CLCS to consider - subject to the principle of consent under para.5(a) of Annex I of the CLCS Rules of Procedure - Submissions of these two states and the Submission which Bangladesh planned to make by July 2011. In its Submission filed ultimately on 25 February 2011, Bangladesh included a comprehensive Section 5 on Settled and Outstanding Delimitations, where it informed the CLCS that areas of the outer CS beyond 200 miles submitted by Bangladesh are the subject of disputes with India (Annex VII Arbitration) and Myanmar (ITLOS) concerning their unresolved delimitations and straight baselines of both these states for the purpose of Rule 46 and Annex I to the CLCS Rules of Procedure; the Submission added in Section 5.13 that:

5.13. Bangladesh wishes to assure the CLCS that the present Submission is made without prejudice to the delimitation of the relevant maritime boundaries with the

²⁴⁶2009- UNCLOS Annex VII *Bangladesh/India Bay of Bengal Territorial and Maritime Dispute* Arbitral Tribunal, comprising P. Sreenivasa Rao (India), Thomas A. Mensah (ITLOS-Ghana, replaced Vaughan Lowe (UK) on 16 December 2010), Tullio Treves (ITLOS-Italy), Ivan A. Shearer (Australia) and President Rudiger Wolfrum (ITLOS-Germany), PCA at http://www.pca-cpa.org/showpage.asp?pag_id=1376; Establishing *Bangladesh/India Bay of Bengal* Tribunal of 13 December 2009 at www.newkerala.com/news/fullnews-10186.html and 1 March 2010 at www.malaysianews.net/story/607142; Thomas Mensah Replaces Vaughan Lowe on Annex VII *Bangladesh/India* Tribunal of 16 December 2010 at <http://www.globalarbitrationreview.com/news/article/28993/lowe-steps-down-bay-bengal-panel/>. For UNCLOS Annex VII *Mauritius v. UK Chagos Marine Protected Area* Arbitration, which has also been dominated by the 3 ITLOS Judges (again Wolfrum and Judges Kateka and Hoffmann) due to appointments of its Arbitrators and again Prof. Shearer by the ITLOS President, see <http://www.pca-cpa.org/> and *infra* notes 293-294. In addition to the Annex VII *Bangladesh/India* and Annex VII *Chagos* Tribunals, Arbitrator Shearer was a member of the 2007 Annex VII *Guyana/Suriname (Jurisdiction and Merits)* Award, under Presidency of another ITLOS Judge Dolliver Nelson at <http://www.pca-cpa.org/> and *supra* notes 7 & 89-92.

coastal States concerned, including with respect to the matters that are presently the subject of third-party (Annex VII Arbitration and ITLOS) adjudication.²⁴⁷

In the view of Bangladesh, the consideration of its Submission by the CLCS will not prejudice the consideration of any matters in the two cases with India and Myanmar (Annex VII Arbitration and ITLOS) and the absence of third party maritime boundaries in this Submission does not affect the demonstration by Bangladesh of its outer CS claim under UNCLOS Article 76, although areas covered by the Submission may be the subject of boundary negotiations.²⁴⁸ It may be recalled that Nicaragua's 2010 Preliminary Partial Submission and Peru's 2010 Note Verbale on Chile's 2009 Preliminary Submission requested the CLCS to exclude from its consideration the disputed areas until after the ICJ rendered the respective *Nicaragua v. Colombia (Merits)* and *Peru v. Chile Maritime Delimitation* Judgments in the future. As was also noted earlier, the CLCS' determination must in no way encroach upon existing and prospective boundary delimitations, nor must it prejudice other land or maritime disputes, which can well be adjudicated-arbitrated or otherwise resolved prior or in parallel to or sometimes in a follow-up to the CLCS' involvement.²⁴⁹ It remains to be seen whether the CLCS will follow Nicaragua's and Peru's approach in the Bay of Bengal, or whether it will issue its Recommendations on Submissions of Myanmar (2008), India (2009) and Bangladesh (2011) prior to resolution of their disputes

²⁴⁷Bangladesh's Submission to the CLCS of 25 February 2011, Section 5: Settled and Outstanding Delimitations, Section 5.8 (*Bangladesh/India*) & 5.12 (*Bangladesh/Myanmar*), Myanmar's Note Verbale of 31 March 2011 and India's Note Verbale of 20 June 2011 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_bgd_55_2011.htm, http://www.un.org/Depts/los/clcs_new/submissions_files/bgd55_11/mmw_nv_un_001_08_04_2011_11-00509.pdf, http://www.un.org/Depts/los/clcs_new/submissions_files/bgd55_11/ind_nv_un_001_20_06_2011.pdf, www.un.org/Depts/los/clcs_new/commission_submissions.htm; Bangladesh Lodges Claim with UN CLCS on the Bay of Bengal of 25 February 2011 at <http://www.banglanews24.com/English/detailsnews.php?nssl=9e5164986e9d24fee7a16513e29c4088&nntl=2011022815976>, http://www.thefinancialexpress-bd.com/more.php?news_id=127434, <http://english.irib.ir/subcontinent/news/politics/item/77548-bangladesh-lodges-claim-with-un-over-continental-shelf-in-bay-of-bengal> & <http://www.thedailystar.net/newDesign/news-details.php?nid=176384>; and 7 April 2011 at <http://www.energybangla.com/index.php?mod=article&cat=EBReport&article=10556>; Bangladesh's Claim to UNCLOS of 4 July 2011 at <http://www.defence.pk/forums/bangladesh-defence/102688-bangladesh-claim-unclos.html>; Statement by the Chairman of the CLCS, UN Doc. CLCS/72, paras 19-22 (16 September 2011) at http://www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3.

²⁴⁸*Id.*, Bangladesh's 2011 Submission to the CLCS, Section 5: Settled and Outstanding Delimitations, Section 5.8 (*Bangladesh/India*), 5.12 (*Bangladesh/Myanmar*) and 5.14-5.16, and Myanmar's Note Verbale of 31 March 2011, protesting straight baselines of Bangladesh and stating that Bangladesh has no outer CS beyond 200 miles, not even CS up to 200 miles, and that contrary to what Bangladesh's 2011 Submission mistakenly asserts, Bangladesh/Myanmar boundary was not yet determined at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_bgd_55_2011.htm, http://www.un.org/Depts/los/clcs_new/submissions_files/bgd55_11/mmw_nv_un_001_08_04_2011_11-00509.pdf.

²⁴⁹See *supra* notes 24-25.

by the UNCLOS Annex VII *Bangladesh/India* Award and the ITLOS *Bangladesh/Myanmar* Judgment.²⁵⁰

Maldives, Sri Lanka, India, Myanmar, Kenya - Annex II of UNCLOS III Final Act

The applicability - along with UNCLOS Article 76 and Annex II - of the special Annex II containing the Statement of Understanding on a Specific Method of the Outer Edge of the Continental Margin in the Southern Bay of Bengal of the UNCLOS III Final Act has been raised first in connection with reliance thereupon by Myanmar in its 2008 Submission (Rakhine Continental Shelf). This reliance was protested by India's Note Verbale of 26 March 2009 as follows:

The Permanent Mission of India to the United Nations has the honor further to state that Myanmar has not provided any basis as to its entitlement to invoke the Statement of Understanding Concerning a Specific Method to Be Used in Establishing the Outer Edge of the Continental Margin in Annex II of the UNCLOS III Final Act. Without making any judgment on Myanmar's interpretation and application of the Statement of Understanding, India considers that the said Statement is applicable only to Sri Lanka and India.²⁵¹

It is noteworthy that so was this Annex II on the Southern Bay of Bengal indeed agreed as applicable only to Sri Lanka and India, but that its last minute inclusion - upon initiative of Sri Lanka's Ambassador Hiran Jayewardene, Secretary-General of the Indian Ocean Marine Affairs Cooperation (IOMAC) - into the UNCLOS III Final Act was intended to avoid reopening debate which could have required inclusion of special provisions - of possibly general application (including in, e.g., the Gulf of Alaska) - in the Convention.²⁵² Myanmar's approach - that could trigger a reopening of this debate in the CLCS - has been supported by Kenya's Note Verbale of 30 April 2009 stating that UNCLOS III Final Act's

²⁵⁰See references to the future ICJ *Nicaragua v. Colombia (Merits)* and *Peru v. Chile Maritime Delimitation* Judgments *supra* notes 105 and 127-128.

²⁵¹India's Note Verbale of 26 March 2009 on Myanmar's 2008 Submission (Rakhine Continental Shelf) at http://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/clcs16_2008_ind_e.pdf, www.un.org/Depts/los/clcs_new/submissions_files/submission_mmr.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm.

²⁵²Note that the UNCLOS III Final Act's Annex II does not refer to "Bay of Bengal" in its title but only in its text, and that there is neither any reference to "Bay of Bengal" in UNCLOS Annex II, Article 3(1)(a), which only refers to the Statement of Understanding. See Satya N. Nandan and Shabtai Rosenne, *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol.II (Martinus Nijhoff 1993), pp.837-890: UNCLOS Article 76, pp.1000-1018: UNCLOS Annex II; p.1017: Article 9 of UNCLOS Annex II; pp.1023-1025: UNCLOS III Final Act's Annex II, *supra* note 20; G. Taft and B. Haq, "Deep Sea Fan Issues", in: P.J. Cook and Ch.M. Carleton (eds.), *Continental Shelf Limits: The Scientific and Legal Interface* (2000) 308-311. On the "possible" U.S. Outer CS (ECS) in the Gulf of Alaska, see *supra* note 214.

Annex II "can be applied to a coastal State upon valid demonstration by that State of the special conditions and the inequity that would otherwise arise for it rather than its geographical location", while Bangladesh's Note Verbale of 23 July 2009 reserved its right to submit comments on Myanmar's contentions regarding the purported applicability of the UNCLOS III Final Act's Annex II.²⁵³

The reason for Kenya's position became clear in its Submission of 6 May 2009 where the UNCLOS III Final Act's Annex II was applied as regards Kenya's outer continental shelf based on Kenya's firm view that this Final Act's Annex II was consistent with the particular and special characteristics of the continental margin of Kenya and that were Kenya to apply UNCLOS Article 76(4) instead of this Annex II, those characteristics would lead to inequity.²⁵⁴ Note Verbale of Sri Lanka of 22 July 2009 on Kenya's Submission stressed - as did Note Verbale of Sri Lanka on Myanmar's 2008 Submission referred to below - that Sri Lanka is "the principal State" under the Statement of Understanding in Annex II (para.3) of the UNCLOS III Final Act, which Myanmar's and Kenya's Submissions applied, and that application of this Annex II (para.5) for the purpose of the CLCS Recommendations is limited to the Southern Bay of Bengal.²⁵⁵

In its 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission, India reserved the right to make a separate Partial (Southern Bay of Bengal) Submission based on Annex II of the UNCLOS III Final Act, and Bangladesh [as it did in regard of Myanmar's 2008 Submission] reserved its right to submit comments on India's contentions regarding the purported applicability of the Statement of Understanding set out at the Annex II of this Final Act.²⁵⁶

The Note Verbale of Sri Lanka of 2 March 2009 on Myanmar's 2008 Submission (Rakhine Continental Shelf) indicated that it was unable to comment, but that this should

²⁵³Kenya's Note Verbale of 30 April 2009 and Bangladesh's Note Verbale of 23 July 2009, para.7, on Myanmar's 2008 Submission (Rakhine Continental Shelf) at http://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/clcs16_2008_mmr_ken_e.pdf http://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/clcs16_2008_mmr_bgd_e.pdf, www.un.org/Depts/los/clcs_new/submissions_files/submission_mmr.htm.

²⁵⁴Kenya's Submission of 6 May 2009, Section 2-5, Section 7 Maritime Delimitations, and Note Verbale of Sri Lanka of 22 July 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/ken35_09/ken2009_executivesummary.pdf, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; Kenya Offshore Oil of 16 February 2011 at: http://www.rigzone.com/news/article.asp?a_id=104235; *supra* note 3.

²⁵⁵*Id.*, Sri Lanka's Note Verbale of 22 July 2009 on Kenya's 2009 Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/ken35_09/lka_re_ken_clcs35.pdf & http://www.un.org/Depts/los/clcs_new/submissions_files/ken35_09/ken2009_executivesummary.pdf.

²⁵⁶India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission, Section I.(5)-(6) and Note Verbale of Bangladesh of 29 October 2009, para.3 at www.un.org/Depts/los/clcs_new/submissions_files/submission_ind_48_2009.htm, http://www.un.org/Depts/los/clcs_new/submissions_files/ind48_09/bgd_re_ind_clcs48_2009e.pdf, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Statement by the CLCS Chairman, UN Doc.CLCS/68 (17 September 2010) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; *supra* note 3.

not be interpreted as either agreement or acquiescence by Sri Lanka to Myanmar's Submission; since the "principal State" referred to in UNCLOS III Final Act's Annex II (para.3) was Sri Lanka, it understood that consideration by the CLCS of Myanmar's Submission will be without prejudice to a future Submission by Sri Lanka under the terms of this Final Act's Annex II and it requested the CLCS that no Recommendations prejudicial to Sri Lanka's interest be made on the area claimed by Myanmar.²⁵⁷

Sri Lanka reiterated its position in respect of Myanmar's 2008 Submission referred to above in Sri Lanka's Submission of 8 May 2009; the latter Submission was closely based on the specific method set forth in Annex II on the Southern Bay of Bengal of UNCLOS III Final Act which was justified by displaying by Sri Lanka's continental margin of the special geological and morphological characteristics described in this Final Act's Annex II. In Section 3 on Absence of Disputes, Sri Lanka's 2009 Submission stated that the CLCS Recommendations will be without prejudice to the future delimitations of the outer CS with other states and that - as also India's Note Verbale of 10 May 2010 confirmed - Sri Lanka held prior consultations with India that their respective Submissions will not prejudice their any future bilateral agreement.²⁵⁸ Amongst its delimited boundaries with other states, Sri Lanka's 2009 Submission listed the 1974 India/Sri Lanka (Historic Waters) Agreement which resolved their territorial dispute by recognizing Sri Lanka's sovereignty over disputed Kachchativu Island (of 3.75 square miles) located in the Palk Strait about 12 miles from India and 10.5 miles from Sri Lanka and India's sovereignty over the Wadge Bank; the Agreement also provided for the continuous access to Kachchativu without visas to the Indian fishermen and pilgrims and for reciprocal continuation of the traditional access of India and Sri Lanka to their waters, jointly with delimiting their boundary in the Palk Strait and Palk Bay by the equidistance which was adjusted in the area of Kachchativu (where it runs 1 mile west of the island).²⁵⁹

²⁵⁷Sri Lanka's Note Verbale of 2 March 2009 on Myanmar's 2008 Submission (Rakhine Continental Shelf) at http://www.un.org/Depts/los/clcs_new/submissions_files/mmr08/clcs16_2008_mmr_lka_e.pdf, www.un.org/Depts/los/clcs_new/submissions_files/submission_mmr.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm.

²⁵⁸Sri Lanka's Submission of 8 May 2009, Sections 1-2, referring to special method set forth in UNCLOS III Final Act's Annex II by straight lines not exceeding 60 miles in length connecting fixed points, defined by latitude and longitude, at each of which the thickness of sedimentary rock is not less than 1 kilometre, Section 3: Absence of Disputes, Section 4(4); Notes Verbales of Maldives of 4 August 2009, India of 10 May 2010 and of Bangladesh of 20 October 2010 at www.un.org/Depts/los/clcs_new/submissions_files/submission_lka_43_2009.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; Training on Delimitation of the Outer Continental Shelf Limits in Sri Lanka of 18 May 2005 at www.dailynews.lk/2005/05/18/news30.htm; 27 September 2009 at www.sundaytimes.lk/090927/FinancialTimes/ft27.html; Sri Lanka to Merge with Andaman Islands of 5 November 2009 at www.dailynews.lk/2009/11/05/news51.asp; Foreign Affairs Ministry's Statement on Sri Lanka's Submission to the CLCS and UNCLOS III Final Act's Annex II of 17 November 2009 at www.lankaweb.com/; *supra* note 3.

²⁵⁹1974 India/Sri Lanka (Historic Waters) Agreement, in: ASIL/IMB Vol.II (1993), Report No.6-10(1), at 1409-1417 at <http://www.brill.nl/international-maritime-boundaries-3>; Rahul Roy-Chaudhury, "Trends in the Delimitation of India's Maritime Boundaries" (2001) at www.ciaonet.org/olj/sa/sa_99ror01.html & www.neiu.edu (on file with the author).

Following its Note Verbale of 23 July 2009 on Myanmar's 2008 Submission and its Note Verbale of 29 October 2009 on India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission referred to above, Bangladesh's Note Verbale of 20 October 2010 on Sri Lanka's 2009 Submission once again reserved its right to comment on the Submission of Sri Lanka at a later stage when more information on application of UNCLOS III Final Act's Annex II on the Southern Bay of Bengal is available.²⁶⁰

A similar reservation was made in the Note Verbale of the Maldives of 4 August 2009 on Sri Lanka's Submission.²⁶¹ The Submission of the Maldives of 26 July 2010 declared that the area of its outer CS beyond 200 miles was not subject to any dispute between it and any other coastal state and that this Submission was made without prejudice to matters relating to maritime boundary delimitations with any adjacent and opposite coastal state. The area covered by Maldives' Submission could be affected by a potential delimitation with Sri Lanka due to a small overlap with the area that forms part of Sri Lanka's 2009 Submission based on the Annex II of the UNCLOS III Final Act referred to above.²⁶² Both Sri Lanka's 2009 Submission and Maldives' 2010 Submissions confirmed their boundaries settled under the 1976 India/Sri Lanka/Maldives Agreement on Their Trijunction Point in the Gulf of Mannar, the 1976 India/Sri Lanka Agreement on Extension of the Gulf of Mannar Boundary to Their Trijunction and the 1976 India/Maldives Arabian Sea Delimitation Agreement.²⁶³

²⁶⁰Bangladesh's Note Verbale of 20 October 2010 on Sri Lanka's 2009 Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/lka43_09/clcs_43_2009_los_bgd.pdf, www.un.org/Depts/los/clcs_new/submissions_files/submission_lka_43_2009.htm, *supra*.

²⁶¹Maldives' Note Verbale of 4 August 2009 on Sri Lanka's 2009 Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/lka43_09/clcs_43_2009_los_mal.pdf, www.un.org/Depts/los/clcs_new/submissions_files/submission_lka_43_2009.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm, *supra*.

²⁶²Maldives' Submission of 26 July 2010, Section 5: Settled and Outstanding Delimitations, Notes Verbales Concerning Chagos Archipelago of: Great Britain of 9 August 2010 and Mauritius of 29 October 2010 and 24 March 2011 [discussed in section on Mauritius, UK (BIOT-Chagos), Maldives below] at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mdv_53_2010.htm; *Maldives Maritime Claims and Boundaries, Limits in the Seas* No.126 (U.S. State Department 2005) at <http://www.state.gov/documents/organization/57678.pdf> & <http://www.state.gov/e/oes/ocns/opa/c16065.htm>; Statement by the Chairman of the CLCS, UN Doc.CLCS/70 (11 May 2011) at www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3. Note that two years prior to its 2010 Submission Maldives was reported to seek buying additional territory due to devastating effects of sea-level rise on Maldives Archipelago, e.g., New Maldives Plan of 10 November 2008 at http://news.bbc.co.uk/2/hi/south_asia/7719501.stm & <http://opiniojuris.org/2008/11/13/small-sovereign-archipelago-seeks-new-elevated-homeland/>; UN Urges Maldives to Tackle Climate Change of 21 July 2011 at <http://www.un.org/apps/news/story.asp?NewsID=39111&Cr=displace&Cr1>.

²⁶³Sri Lanka's 2009 Submission, Section 3 & Maldives' 2010 Submission, Section 5 at www.un.org/Depts/los/clcs_new/submissions_files/submission_lka_43_2009.htm & http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mdv_53_2010.htm, *supra*; ASIL/IMB Vol.II (1993), Report No.6-8: 1976 India/Maldives at 1389; Report No.6.9: 1976 India/Maldives/Sri Lanka at 1401; Report No.6.10(2): 1976 India/Sri Lanka Gulf of Mannar and Bay of Bengal at 1419 at <http://www.brill.nl/international-maritime-boundaries-3>.

Oman, Yemen, Pakistan, India

In its 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission, India informed the CLCS that this Submission was without prejudice to still outstanding maritime delimitations, including those between India/Pakistan and India/Oman in the Arabian Sea, pending resolution of which delimitations, there applied provisional equidistant boundary lines between those states.²⁶⁴ In its Note Verbale of 19 May 2010, Oman acknowledged that the outer continental shelf covered by Oman's 2009 Preliminary Submission overlapped with that covered by India's 2009 Partial Submission and that this overlap area was, therefore, subject to India/Oman outer CS delimitation.²⁶⁵

The 2009 Preliminary Submission of Oman further specified that Oman had concluded three maritime delimitation agreements: the 1974 Oman/Iran Delimitation in the Strait of Hormuz Agreement, the 2000 Oman/Pakistan Muscat EEZ Delimitation Agreement and the 2003 Oman/Yemen Delimitation in the Arabian Sea Agreement; Oman's outer CS beyond 200 miles was located between the southernmost point of the Oman/Pakistan Agreement and the easternmost point of the Oman/Yemen Agreement.²⁶⁶ Were there to be an overlap between the areas included in the Submissions of Oman and those of Yemen and

²⁶⁴India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission, Section V: Relevant Maritime Delimitations, Note Verbale of Oman of 19 May 2010 at www.un.org/Depts/los/clcs_new/submissions_files/submission_ind_48_2009.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* notes 3, 232-235.

²⁶⁵*Id.*, Oman's Note Verbale of 19 May 2010 on India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/ind48_09/clcs_48_2009_los_omn.pdf.

²⁶⁶Oman's Preliminary Submission of 15 April 2009, Section III.d) Maritime Boundaries http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/omn_2009_preliminaryinfo.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; *Oman's Hypothetical Straight Baselines, Limits in the Seas* No.61 (U.S. State Department 1975) at <http://www.state.gov/documents/organization/61497.pdf> and *Straight Baselines of Djibouti and Oman, Limits in the Seas* No.113 (U.S. State Department 1992) at <http://www.state.gov/documents/organization/58382.pdf> & <http://www.state.gov/e/oes/ocns/opa/c16065.htm>; U.S. Protests Against Oman's 1981-82 Straight Baselines at http://www.dtic.mil/whs/directives/corres/20051m_062305/oman.doc & <http://www.dtic.mil/whs/directives/corres/html/20051m.htm>; 2000 Oman/Pakistan Muscat EEZ Delimitation Agreement, in: ASIL/IMB Vol.IV (2002), Report No.6-17, at 2809 at <http://www.brill.nl/international-maritime-boundaries-1>; 2003 Oman/Yemen Delimitation in the Arabian Sea Agreement, in: ASIL/IMB Vol.V (2005), Report No.6-21, at 3900 at <http://www.brill.nl/international-maritime-boundaries>. See also Oman Facing First ICSID Claim of 27 April 2011 at <http://www.globalarbitrationreview.com/news/article/29426/oman-facing-first-icsid-claim/>; Alternative Ways to Hormuz Strait of 27 January 2012 at <http://www.voanews.com/english/news/middle-east/Arab-Gulf-States-Urged-to-Increase-Pipelines-After-Iran-Oil-Threats-138200949.html>; Strait of Hormuz of 14 February 2012 at <http://www.bbc.co.uk/news/world-middle-east-17027768> and 21 February 2012 at <http://www.voanews.com/english/news/US-Crew-Vigilant-as-Carrier-Sails-Through-Strait-of-Hormuz-139839083.html>; *supra* note 3.

Pakistan referred to further below, it could be necessary to extend the boundaries drawn in Oman/Pakistan and Oman/Yemen Agreements.

In the meantime of such an extension, Oman's Note Verbale of 7 August 2009 drew "a National Rights Reservation" against Pakistan's 2009 Submission, which - like 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission of India referred to above - declared that pending maritime delimitation agreements between Pakistan and other states concerned, there will apply provisional equidistant boundaries.²⁶⁷ Having confirmed the importance of the the 2000 Oman/Pakistan Muscat EEZ Delimitation Agreement as referred to in the 2009 Preliminary Submission of Oman, Pakistan's 2009 Submission also made remarks, which triggered Oman's rights reservation and which applied to Oman's straight baselines that have been repeatedly protested by the United States.²⁶⁸

Since both India's 2009 Partial (Bay of Bengal-Andamans-Arabian Sea) Submission and Pakistan's 2009 Submission provided for provisional application of equidistance pending resolution of their boundary delimitations, Pakistan's Submission relied on a provisional India/Pakistan equidistant from the low-water marks along the Pakistan and Indian coasts.²⁶⁹ It added that their actual TS/EEZ/CS delimitation was, however, pending because of an unresolved - in a follow-up to the 1968 *Rann of Kutch* Award - India/Pakistan land boundary in Sir Creek in the Rann of Kutch and that their maritime boundary was to start from a to-be-agreed terminus of their land boundary.²⁷⁰ Since 2010 both states have engaged into resolution of their another river dispute through establishing the PCA *Pakistan v. India Kishanganga River (Jammu & Kashmir) Hydroelectric Project* Arbitral Tribunal headed by former ICJ President Stephen M. Schwebel, which Tribunal sofar rendered *Kishanganga*

²⁶⁷Pakistan's Submission of 30 April 2009, Part 5: Relevant Maritime Delimitations and Figure 1, Oman's Note Verbale of 7 August 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_pak_29_2009.htm, http://www.un.org/Depts/los/clcs_new/submissions_files/pak29_09/omn_re_pak_2009.pdf, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* notes 3 & 237.

²⁶⁸*Id.*, and *U.S. Limits in the Seas* and other references to Oman's baselines *supra* note 266.

²⁶⁹See *supra* notes 237 & 264 [India] and 267 [Pakistan]. On scanning by India of uninhabited islands and rocks and equipping them with radars amid worries that Pakistan could base marine jihads on these rocks, see *supra* notes 234-235.

²⁷⁰Pakistan's 2009 Submission, Part 5: Relevant Maritime Delimitations and Figure 1 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_pak_29_2009.htm, *supra*; 1968 *Rann of Kutch* Award, 50 ILR 2; (1968) 7 ILM 633; (1971) 65 AJIL 346-357; (1974) 23 ICLQ 821; No.433/Stuyt]; Rivers of Bangladesh at http://en.wikipedia.org/wiki/Rivers_of_Bangladesh and India at http://en.wikipedia.org/wiki/Rivers_of_India; India/Pakistan Sir Creek Dispute at http://en.wikipedia.org/wiki/Sir_Creek and India's protest against Pakistan's 1996 Straight Baselines, of which Point K lies off the eastern bank of Sir Creek, *Pakistan's Straight Baseline Claim, Limits in the Seas No.118* (U.S. Department of State 1996) at <http://www.state.gov/documents/organization/57680.pdf> & <http://www.state.gov/e/oes/ocns/opa/c16065.htm>; No Chances of Agreement Yet over Sir Creek of 25 March 2007 at www.earthtimes.org/articles/show/43910.html; No Early Resolution of Sir Creek Dispute of 1 March 2011 at <http://www.calcuttanews.net/story/750232/ht/No-early-resolution-of-Sir-Creek-dispute-Navy-chief> and 9 April 2011 at <http://www.thefridaytimes.com/08042011/page8a.shtml>.

(Provisional Measures) Order and effected two site visits (*Descente sur les lieux*) in 2011-2012.²⁷¹

²⁷¹Indus Waters Treaty (IWT): *Pakistan v. India Kishanganga River (Jammu & Kashmir) Hydroelectric Project* Arbitration (concerning Kishanganga hydro power plant-330-MW being constructed by India in Jammu and Kashmir on Kishanganga/(called Neelum in Pakistan) - a tributary of River Jhelum; according to Pakistan, India may not - under IWT - divert Kishanganga waters to the Bonar Madumati Nullah-Jhelum tributary, which falls into the Wular Lake before joining the Jhelum again; India argues that it has the right to do so) -- Judges Bruno Simma (ICJ-Germany) and Jan Paulsson (ICCA-Sweden, Paris): both appointed by Pakistan (18 May 2010) and Judges Peter Tomka (ICJ-Slovakia) and Lucius Cafilisch (Switzerland): both appointed by India (17 June 2010), President Stephen M. Schwebel (ICJ-United States): appointed by UNSG Ban Ki-Moon (29 October 2010), Prof. Howard S. Wheeler and Sir Franklin Berman: appointed by Rector of the Imperial College of Science & Technology in London and the Lord Chief Justice of England respectively (25 December 2010) - see PCA at http://www.pca-cpa.org/showpage.asp?pag_id=1392 and Map in: Pakistan Seeks Resolution of Kishanganga Dispute of 20 May 2010 at <http://online.wsj.com/article/SB10001424052748704513104575256314241294450.html> & http://sg.wsj.net/public/resources/images/AI-BC654_INDIPA_NS_20100520152427.gif and Kishanganga Layout Plan at http://www.nhpcindia.com/Projects/English/Scripts/Prj_Introduction.aspx?vid=19; Arbitrators Appointed of 21 June 2010 at http://www.silobreaker.com/stephen-m-schwebel-11_86715042 & <http://www.greaterkashmir.com/news/2010/Jun/20/the-battle-for-kishenganga-11.asp> & http://www.risingkashmir.com/?option=com_content&task=view&id=24483 & <http://www.globalarbitrationreview.com/news/article/28486/arbitrators-appointed-indus-water-treaty-dispute/>; Former ICJ President Stephen M. Schwebel < at http://en.wikipedia.org/wiki/Category:Presidents_of_the_International_Court_of_Justice, http://www.squire.law.cam.ac.uk/eminent_scholars/judge_stephen_m_schwebel_photographs_of_judge_stephen_m_schwebel.php, http://wn.com/Stephen_Schwebel, http://www.cambridge.org/gb/knowledge/isbn/item6037335/?site_locale=en_GB, <http://www.carnegiecouncil.org/resources/video/data/000047> & <http://www.brill.nl/decisions-world-court-relevant-un-convention-law-sea>> to Chair *Pakistan v. India Kishanganga River (Jammu & Kashmir) Hydroelectric Project* Arbitration of 1 November 2010 at <http://lexarbitri.blogspot.com/2010/10/judge-schwebel-to-head-kishanganga.html> , <http://www.globalarbitrationreview.com/news/article/28866/schwebel-chair-panel-pakistan-india-river-dispute/> & http://article.wn.com/view/2010/10/30/Stephen_Schwebel_to_head_Kishanganga_arbitration_court/; Appointments of Sir Franklin Berman and Prof. Howard S. Wheeler Complete 7-Member *Kishanganga* Tribunal of 25 December 2010 at <http://practicalacademic.blogspot.com/2010/12/kishanganga-dispute-between-india-and.html> & <http://www.indianexpress.com/news/kishanganga-arbitration-to-start-midjan/729127/0>; No Provisional Measures Requested of 15 January 2011 at <http://www.indianexpress.com/news/kishenganga-hearing-india-gets-relief-for-now/737649/> and Pakistan's *Kishanganga* Memorial by the Middle of April 2011, India's Counter-Memorial by the Middle of October 2011, in: Moratorium on Kishanganga Project Urged of 19 March 2011 at <http://www.dawn.com/2011/03/19/moratorium-on-kishanganga-project-urged.html>; Site Visit (*Descente sur les lieux*) of the *Pakistan v. India Kishenganga* Arbitral Tribunal and Both Parties to the Neelum-Jhelum and Kishenganga Hydroelectric Projects on 15-21 June 2011 at <http://www.globalarbitrationreview.com/news/article/29575/tribunal-visits-divided-kashmir/>, <http://www.newkerala.com/news/2011/worldnews-10036.html>, <http://dunyanews.tv/index.php?key=Q2F0SUQ9MiNOaWQ9MjgyOTU>, http://www.kashmirilife.net/index.php?option=com_content&view=article&id=1733%3Astephen-schwebel&Itemid=158 & <http://www.kashmirpress.com/the-news/1-latest-news/4466-kishanganga-project-high-level-concludes-visit>; 2011 *Pakistan v. India Kishanganga River (Interim Measures Application of Pakistan)* Order, unanimous, President Stephen M. Schwebel at <http://www.asil.org/ilib110930.cfm> & http://www.pca-cpa.org/showpage.asp?pag_id=1392,

Submissions in Africa

East Africa - Indian Ocean

Yemen, Somalia, Kenya, Tanzania

Whereas the 2003 Oman/Yemen Delimitation in the Arabian Sea Agreement was relied upon in Oman's 2009 Preliminary Submission referred to earlier, Yemen's 2009 Partial (Southeast of Socotra Island Area) Submission clearly declared Absence of Disputes in the outer CS area covered by this Submission.²⁷² This Yemen's position was contested in Note Verbale of Somalia of 19 August 2009²⁷³ and in the preceding Somalia's Preliminary Submission of 14 April 2009 on the ground that all the unresolved delimitation issues and any overlap between the claimed areas of the outer CS are maritime disputes for the purpose of Rule 46 and Annex I of the CLCS Rules of Procedure.²⁷⁴ Both Somalia's Note Verbale and Preliminary Submission expressed its readiness to enter into consultations with Yemen with a view to allowing the CLCS to make Recommendations on both Yemen's and Somalia's Submissions without prejudice to delimitation of their continental shelves; pending

<http://www.globalarbitrationreview.com/news/article/29853/pakistan-wins-interim-measures-against-india>,
<http://www.indianexpress.com/news/kishanganga-hague-court-halts-permanent-works/851736/>&
<http://www.dawn.com/2011/09/25/india-told-to-stop-work-on-kishanganga-dam.html>; *Pakistan v. India Kishanganga* Site Visit to the Neelum River Valley on 3-6 February 2012 at http://www.pca-cpa.org/showpage.asp?pag_id=1392,
http://www.pca-cpa.org/shownews.asp?ac=view&nws_id=329&pag_id=1261 &
<http://www.globalarbitrationreview.com/news/article/30192/a-snowy-return-kashmir/>.

²⁷²Yemen's Partial (Southeast of Socotra Island Area) Submission of 20 March 2009, Section 4: Absence of Disputes, Note Verbale of Somalia of 19 August 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_yem.htm,
http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Statement of the CLCS Chairman, UN Doc. CLCS/68 (17 September 2010) at www.un.org/Depts/los/clcs_new/clcs_home.htm &
www.un.org/Depts/los/; Socotra at <http://en.wikipedia.org/wiki/Socotra>; *supra* notes 3.

²⁷³*Id.*, Note Verbale of Somalia of 19 August 2009 on Yemen's Partial Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/yem09/som_re_yem_clcs18.pdf.

²⁷⁴Somalia's Preliminary Submission of 14 April 2009, Section 6: Maritime Delimitations and Other Issues, Including Kenya/Somalia Memorandum of Understanding of 7 April 2009 http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/som_2009_preliminaryinfo.pdf and MOU also in *UN Law of the Sea Bulletin* 52-53 (2009 No.70) and at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/KEN.htm> &
http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/som_2009_mou.pdf,
http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm &
http://www.un.org/Depts/los/clcs_new/clcs_home.htm; Kenya/Somalia MOU of 11 April 2009 at <http://english.people.com.cn/90001/90777/90855/6629881.html> &
http://www.garoweonline.com/artman2/publish/Africa_22/Somalia-Kenya_sign_MoU_for_maritime_area_under_dispute_Exclusive.shtml; Somalia (Puntland) Oil, *infra* note 277; and *supra* note 3.

agreement to this effect, Somalia requested the CLCS not to take any steps that would prejudice any future bilateral delimitation in the maritime area concerned (i.e., Southeast of Socotra Island).

As Somalia's 2009 Preliminary Submission specifies, the Somali continental margin is characterized by a narrow continental shelf which broadens slightly to the north. Midway between the border with Kenya in the south and the tip of the Horn of Africa (HOA) to the north, there is a pronounced submarine spur (the Central Somali Spur) protruding eastward. It is asserted that the continental margin of Somalia is part of a passive continental margin which was formed in Jurassic times by the continental break-up between the African Continent and the continental block of Madagascar and India.

Somalia's 2009 Preliminary Submission also quotes the Kenya/Somalia Memorandum of Understanding (MOU) of 7 April 2009, which classified their unresolved delimitation as a "maritime dispute" and which declared that they both had a strong common interest with respect to the establishment of the outer CS' limits without prejudice to delimitation of maritime boundaries - including boundaries between their outer CS beyond 200 miles - in the area under dispute. Through the Kenya/Somalia MOU, the two states gave their prior consent to the consideration by the CLCS of their respective Submissions and the making Recommendations on the Submissions without prejudice to maritime boundary delimitation.²⁷⁵ The Kenya/Somalia MOU was relied upon in Section 7 on Maritime Delimitations of Kenya's Submission of 6 May 2009 and in in Somalia's Note Verbale of 19 August 2009 on this Submission of Kenya, whose application of UNCLOS III Final Act's Annex II (meant originally to apply to the Southern Bay of Bengal) was already discussed earlier.²⁷⁶ The ensuing Somalia's Note of 10 October 2009 [communicated to UNSG Ban Ki-Moon by UN Ambassador of the Somali Republic only on 2 March 2010] stated, however, that ratification of the Kenya/Somalia Memorandum of Understanding, granting each other

²⁷⁵*Id.*, Kenya/Somalia Memorandum of Understanding of 7 April 2009.

²⁷⁶Kenya's Submission of 6 May 2009, Section 2-5, Section 7 Maritime Delimitations, Section 8-4: 1 point (KEN-ECS-40), where the outer limit line delineating the outer edge of the continental margin of Kenya intersects a hypothetical line constructed as an extension of the unsettled boundary line between Kenya/Somalia; Notes Verbales of Somalia of 19 August 2009 and 10 October 2009 [communicated to UNSG Ban Ki-Moon by UN Ambassador of the Somali Republic only on 2 March 2010] at http://www.un.org/Depts/los/clcs_new/submissions_files/ken35_09/ken2009_executivesummary.pdf, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; Kenya Offshore Oil of 16 February 2011 at: http://www.rigzone.com/news/article.asp?a_id=104235 & 23 March 2011, *id.* id=105290 & http://www.rigzone.com/news/region.asp?r_id=17; *supra* note 3. On Kenya Submissions's application of UNCLOS III Final Act's Annex II, as protested by Note Verbale of Sri Lanka of 22 July 2009, and on Kenya's Note Verbale of 30 April 2009 supporting application of this UNCLOS III Final Act's Annex II also by Myanmar's 2008 Submission, see *supra* notes 253-255.

no-objection with respect to their Submissions to the CLCS, had been rejected by the Transitional Federal Parliament of Somalia on 1 August 2009.²⁷⁷

Apart from Kenya/Somalia overlapping claims to the north, Kenya's 2009 Submission noted its overlapping claims with Tanzania to the south and reliance on extension of their 1976 Kenya/Tanzania Delimitation Agreement.²⁷⁸ Tanzania's Preliminary Submission of 7 May 2009 [one day after Kenya's Submission of 6 May 2009, *supra*] stated that it was consented to by both Kenya and the Seychelles upon understanding that this Submission was without prejudice to bilateral delimitations in their overlapping areas, as was confirmed by Tanzania's final Submission of 18 January 2012, which added that the TS/EEZ boundary drawn under the 1976 Kenya/Tanzania Agreement was extended further seaward under their Outer Continental Shelf Delimitation Agreement of 23 June 2009.²⁷⁹

Mauritius, UK (BIOT-Chagos), Maldives

The 200-mile fisheries zone established for the British Indian Ocean Territories (BIOT) in 1991, was followed by the 2003 Proclamation on the BIOT's Environment (Protection and Preservation) Zone, of which geographical coordinates of points were deposited by Britain pursuant to UNCLOS Article 75(2) with the UN Secretary-General, as

²⁷⁷*Id.*, Somalia's Note Verbale of 10 October 2009 on Kenya's 2009 Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/ken35_09/som_re_ken_mou35.pdf http://www.un.org/Depts/los/clcs_new/submissions_files/ken35_09/ken2009_executivesummary.pdf; Somali Parliament Rejects MOU with Kenya of 1 August 2009 at <http://allafrica.com/stories/200908020003.html>; Puntland Oil Drilling of 17 March 2011 at <http://www.iii.co.uk/articles/14750/range-eyes-puntland-drilling-despite-wider-loss>; Somalia (Puntland) Oil Exploration of 17 January 2012 at <http://www.bbc.co.uk/news/world-africa-16600649> & <http://www.ibtimes.com/articles/283125/20120117/somalia-oil-exploration-northern-region-puntland-starts.htm> & http://en.wikipedia.org/wiki/Puntland-Somaliland_dispute.

²⁷⁸Kenya's Submission of 6 May 2009, Section 2-5, Section 7 Maritime Delimitations, Section 8-4: 1 point (KEN-ECS-1), where the outer limit line delineating the extended continental shelf of Kenya (350 miles constraint) intersects a hypothetical line constructed as an extension of the existing boundary line agreed between Kenya/Tanzania at http://www.un.org/Depts/los/clcs_new/submissions_files/ken35_09/ken2009_executivesummary.pdf, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm, *supra*; 1976 Kenya/Tanzania Delimitation Agreement, in: ASIL/IMB Vol.I (1993), Report No.4-5 at 875 at <http://www.brill.nl/international-maritime-boundaries-3>.

²⁷⁹Tanzania's Preliminary Submission of 7 May 2009, Sections 3 & 6: Maritime Delimitations and Other Issues at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/tza_2009_preliminaryinfo.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm and Tanzania's Submission of 18 January 2012, Section 5: Maritime Delimitations and Absence of Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_tza59_2012.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; 2009 Kenya/Tanzania Outer Continental Shelf Agreement at <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/TZA.htm>; Tanzania's Oil of 16 March 2011 at http://www.rigzone.com/news/article.asp?a_id=105167; & http://www.rigzone.com/news/region.asp?r_id=17; *supra* note 3.

protested in 2004 by Mauritius on the ground that it - and not Britain - exercises "complete and full sovereignty over the Chagos Archipelago, including its maritime zones, which forms part of the national territory of Mauritius", and the UK also designated in 2001 Diego Garcia Conservation Restricted Area under the 1971 Ramsar Convention (that had specifically exempted the U.S. facility) and in 2009 - the Chagos Islands Marine Reserve of 250,000 square miles.²⁸⁰ The BIOT comprises seven atolls of the Chagos Archipelago with about 56 small islands (of only 60 square kilometres of land area in total) located strategically in the central Indian Ocean, some 300 miles south of the Maldives and 1,000 miles south-west of India, about one-half the way from Africa to Indonesia, with the simplified BIOT/Maldives line of equidistance having been agreed between Britain and Maldives at the technical level; the only inhabited of all Chagos Islands as well as the largest and southernmost Diego Garcia (of 27.20 square kilometres and 7 metres high, enclosing 6.5 by 13 miles lagoon) is the site of the UK/USA Joint Navy and the Air Force Base (under 50-year Treaty expiring in 2016 and being renewable until 2036), which served as a naval refuelling and support station (including for U.S. operations in Iraq and Afghanistan), possesses air-fields, houses 1,700 military personnel (with only 50 troops being British) and 1,500 civilian contractors (from Britain, Mauritius, the Philippines and the United States) and also carries out the licensing of

²⁸⁰1991 Proclamation on BIOT's Fisheries Conservation and Management Zone, in: (1991) 62 BYIL 648-649; 1994 UK/Mauritius Joint Statement on Fisheries, in: (1994) 65 BYIL 582-583; Mauritius' Declaration of 25 March 1997 [2167 UNTS 261] upon its ratification of the 1995 UN Fish Stocks Agreement at www.un.org/Depts/los/; 2003 Proclamation on BIOT's Environment (Protection and Preservation) Zone, *Law of the Sea Bulletin* 99 (2004 No.54) and 2004 Mauritius Protest, *id.*, at 128; Tables of Charts and Geographical Coordinates and *UN Secretary-General Oceans Report*, UN Doc.A/59/62/Add.1, paras 49-50 (2004) at www.un.org/Depts/los/; Designation of the Diego Garcia Conservation Restricted Area as a protected site of 4 July 2001 under the 1971 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat [in force: 21 December 1975, 11 ILM 963 (1972)] and the 1982 Paris Protocol [in force: 1 October 1986, 22 ILM 698 (1983); www.ramsar.org/]; Indian Navy to Assist Mauritius in Hydrographic Survey of Its Ports, Islands and EEZ in 2006 of 25 October 2005 at http://aol.countrywatch.com/aol_wire.asp?vCOUNTRY=113&UID=1865597; 2009 Chagos Islands Marine Reserve and 2010 BIOT Marine Protected Area, *infra*.

commercial fishing (with an annual income of about US \$ 1 million),²⁸¹ while other uninhabited Chagos Islets (especially the Salomon Group) are common stopping points for

²⁸¹A few hundred people of mostly Indian descent (of 18th century workers) known as the Ilois, whom the British Government does not classify as indigenous residents, were expelled from Diego Garcia to Mauritius and Seychells between 1967 and 1973, were paid by Britain 695,000 in 1973 and then 4 million UK pounds in 1982 as "full settlement", and they were banned by two British Orders-in-Council of 10 June 2004 from returning to the island on account of security considerations as well as a lack of fresh water and risk of flooding, with some 100 of the exiled (meanwhile impoverished in Mauritius and Seychelles) Chagossians having subsequently still sought compensation (and the right of accomodation in Britain) in the English courts. See Diego Garcia at Wikipedia http://en.wikipedia.org/wiki/Diego_Garcia, at 3; British Court of Appeal Rejects Islanders' Complaints of 22 July 2004 at http://news.bbc.co.uk/2/hi/uk_news/england/southern_counties/3918749.stm; British High Court Ruling - BIOT 2004 Orders in Council of 26 October 2004 at <http://news.scotsman.com/uk.cfm?id=1239132004>; Islanders Launch High Court Bid of 6 December 2005 at <http://news.bbc.co.uk/1/hi/uk/4502788.stm>; Chagossians' Humanitarian Voyage to Diego Garcia on 30 March-10 April 2006 at <http://news.bbc.co.uk/1/hi/uk/4852768.stm>, www.gnn.gov.uk/content/detail.asp?NewsAreaID=2&ReleaseID=193772, <http://news.independent.co.uk/world/asia/article354484.ece> & www.gnn.gov.uk/content/detail.asp?NewsAreaID=2&ReleaseID=195411; Appeals Court Rules Against Islanders of 21 April 2006 at www.woai.com/news/national/default.aspx and *Olivier Bancoult, et al. v. Robert S. McNamara, et. al.* Judgment of the U.S. Court of Appeals at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200604/05-5049a.pdf>; Chagos Families Win Right to Return of 11 May 2006 at www.telegraph.co.uk/global/main.jhtml?xml=/global/2006/05/12/wchag12.xml & http://news.bbc.co.uk/2/hi/uk_news/4760879.stm; British Foreign Office Challenges Chagos Island Ruling of 5 February 2007 at <http://politics.guardian.co.uk/foreignaffairs/story/0,,2006403,00.html>; British High Court dismisses FCO Appeal, so Chagossians Want Compensation of 23 May at www.bordermail.com.au/news/bm/columns/805243.html and 23 June 2007 at <http://politics.guardian.co.uk/gordonbrown/comment/0,,2109639,00.html>; 1/3 July 2008 at www.guardian.co.uk/commentisfree/2008/jul/03/humanrights.foreignpolicy & www.guardian.co.uk/world/2008/jul/01/humanrights.usforeignpolicy and 7 July 2008 at www.dawn.com/2008/07/07/top12.htm; Britain Wins Appeal in the House of Lords Judgment on the Judicial Review of the BIOT 2004 Orders in Council of 22 October 2008 at www.fco.gov.uk/resources/en/press-statement/3426210/6769830/BIOT-Judgment-221008, www.cnn.com/2008/WORLD/asiapcf/10/22/britain.chagos.islanders.ap/index.html & http://news.bbc.co.uk/2/hi/uk_news/7683726.stm; Visit of Chagossians to the British Indian Ocean Territory of 29 October 2009 at www.fco.gov.uk/en/news/latest-news/?view=News&id=21103301.

long-distance sailors travelling from Southeast Asia to the Red Sea or the coast of Africa.²⁸² All these islands form a part of the 2009 UK Chagos Islands Marine Reserve and the 2010 BIOT Marine Protected Area (MPA), where commercial fishing is banned.²⁸³

Mauritius, on its part, having protested the BIOT Environment (Protection and Preservation) Zone noted above in 2004, included both Chagos Archipelago and Tromelin (disputed but also co-managed with France) in the 2005 Mauritius' Maritime Zones Act and Baselines and Delineating Lines Regulations, as well as in Mauritius' 2009 Partial (Rodrigues Island Region) Submission and its 2009 Preliminary Partial (Chagos Archipelago Region)

²⁸²BIOT at http://en.wikipedia.org/wiki/British_Indian_Ocean_Territory, noting that upon its establishment in 1965, BIOT also comprised Aldabra, Farquhar and Desroches (Des Roches) Islands, which were returned to Seychelles as a result of it attaining independence in 1976; Diego Garcia Military Base at www.globalsecurity.org/military/facility/diego-garcia.htm and the UK/USA Treaties at <http://homepage.ntlworld.com/jksonc/docs/bancoult-d16b1.html>, including the 1987 UK/USA BIOT Agreement [registered by the UK: 24 August 1990], 1576 UNTS 179; Diego Garcia at http://en.wikipedia.org/wiki/Diego_Garcia, noting that B-52s and other bombers have been deployed from Diego Garcia on missions to Iraq and Afghanistan; Chagos Archipelago at http://en.wikipedia.org/wiki/Chagos_Archipelago, listing Diego Garcia (including Diego Garcia and three smaller islets at the northern end), Egmont Islands (6 islets), Peros Banhos (27 islets), Solomon Islands (11 islets), Great Chagos Bank being the largest atoll structure of the World of 13,000 square kilometres of mostly water area (7 islets), Blenheim Reef (3 islets) and Speakers Bank (1 islet), with the largest individual islands including: Diego Garcia (27.20 square km), Eagle (2.45 square km, Great Chagos Bank), Ile Pierre (1.50 square km, Peros Banhos), Eastern Egmont (1.50 square km, Egmont Islands), Ile de Coin (1.28 square km, Peros Banhos) and Ile Boddam (1.08 square km, Salomon Islands) and with some 9 banks being permanently submerged (Colvocoresses, Banres, Victory, Cauvin, Pitt, Ganges, Wight, Centurion and Owen Banks); List of Islands in Chagos Archipelago at http://en.wikipedia.org/wiki/List_of_Islands_in_Chagos_Archipelago; Chagos Maps at <http://homepgae.ntlworld.com/jksonc/docs/dgmap2.html> & www.lib.utexas.edu/maps/islands_oceans_poles/diego_garcia_pol80.jpg.

²⁸³On Chagos Island Marine Reserve, see 8 February 2009 at www.independent.co.uk/environment/nature/giant-marine-park-plan-for-chagos-1604555.html & www.telegraph.co.uk/news/uknews/4558122/Turn-disputed-Chagos-Islands-into-marine-reserve-say-conservationists.html. On BIOT MPA, see UK Statement of 1 April 2010 at www.fco.gov.uk/en/news/latest-news/?view=News&id=22001512, <http://news.bbc.co.uk/2/hi/science/nature/8599125.stm> & <http://www.independent.co.uk/environment/nature/preserved-britains-barrier-reef-1934048.html>; Britain Creates World's Largest Marine Reserve of 5-6 April 2010 at <http://www.guardian.co.uk/environment/2010/apr/06/chagos-fishing-marine-protection-conservation> & www.good.is/post/britain-creates-world-s-largest-marine-reserve. On Three 2009 U.S. Marine National Monuments, see *supra* notes 214-215. On UNCLOS Annex VII *Mauritius v. UK Chagos Marine Protected Area* Arbitration, see remarks in this section below.

Submission to the CLCS.²⁸⁴ The Mauritius' 2009 Preliminary Partial (Chagos Archipelago Region) Submission informed the CLCS that there existed a dispute between Mauritius and the United Kingdom over the Chagos Archipelago and that negotiations were ongoing.²⁸⁵ Baselines established by Mauritius around the Chagos Archipelago and the respective list of geographical coordinates and chart entitled "Chagos Archipelago: Archipelagic Baselines" were on 19 March 2009 forcefully protested by Britain insofar as Mauritius was purporting to exercise rights over BIOT territory of the United Kingdom.²⁸⁶ In its Letter of 28 September 2009, Britain reiterated that the BIOT is British and has been since 1814, and that it does not recognize the sovereignty claim of Mauritius, but it stressed that British Government has recognized Mauritius as the only state which has a right to assert such claim when the UK relinquishes its sovereignty over the Chagos Archipelago. The Letter set out Britain's need to abide by its treaty obligations with the United States and its need of the British Indian Ocean Territory (BIOT) for defence purposes, as well as regulation of fishing rights, the environment, the continental shelf and future visits to the Territory by Chagossians.²⁸⁷

The 2010 Submission of Maldives to the CLCS stated that "the consideration of the present Submission will not prejudice matters relating to the delimitation of maritime boundaries with any adjacent and opposite coastal States." Should the UK title to the

²⁸⁴2005 Mauritius' Maritime Zones Act and Baselines and Delineating Lines Regulations, in *UN Law of the Sea Bulletin* 13, 20: Chagos, 26: Tromelin, 32: Chagos, 33, 37-38: Maps (2008 No.67); as protested in France's Note Verbale of 30 July 2009, stating that Tromelin has the French territorial status since 1722 and that France does not therefore recognize the deposit of Mauritius as having any legal effect, in: *UN Law of the Sea Bulletin* 44 (2010 No.71); Mauritius' Partial Submission (Rodrigues Island Region) of 6 May 2009, listing in Section 1-2 Tromelin and Chagos Archipelago as forming part of Mauritius territory, Section 5: Outstanding Maritime Delimitations informing the CLCS that there are no disputes between Mauritius and any other states in Rodrigues Island Region at www.un.org/Depts/los/clcs_new/submissions_files/submission_mus_36_2009.htm & http://www.un.org/Depts/los/clcs_new/commission_submissions.htm and Mauritius' Preliminary Partial Submission (Chagos Archipelago Region) of 6 May 2009, listing in Section 1-2 Tromelin and Chagos Archipelago as forming part of Mauritius territory, Section 6: Unresolved Land and Maritime Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/mus_2009_preliminaryinfo.pdf & www.un.org/Depts/los/clcs_new/commission_preliminary.htm; Statement by the CLCS Chairman, UN Doc. CLCS/64 (1 October 2009) at www.un.org/Depts/los/ & www.un.org/Depts/los/clcs_new/clcs_home.htm; France/Mauritius Agreement on Economic, Scientific and Environmental Co-Management of Tromelin Island of 30 March 2011 at <http://www.newsnw.mu/NewsView.asp?NID=6559>; Note Verbale of Mauritius Concerning Tromelin of 17 May 2011, in *UN Law of the Sea Bulletin* 35-36 (2011 No.76) at <http://www.un.org/Depts/los/>; *supra* note 3. On Tromelin, see also remarks in this section below.

²⁸⁵*Id.*, Mauritius' 2009 Preliminary Partial Submission (Chagos Archipelago Region), Section 6: Unresolved Land and Maritime Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/mus_2009_preliminaryinfo.pdf & www.un.org/Depts/los/clcs_new/commission_preliminary.htm.

²⁸⁶UK Note Verbale of 19 March 2009 protesting against charts and lists of geographical coordinates deposited by Mauritius with respect to the BIOT, in *UN Law of the Sea Bulletin* 110 (2009 No.69); as replied by Mauritius' Note Verbale of 9 June 2009, *id.* at 59 (2009 No.70); UK's CLCS Submissions of 8 April 2009 at <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=16057770>. On the 2003 UK Proclamation on BIOT's Environment (Protection and Preservation) Zone, see *supra*.

²⁸⁷UK Letter to the UNGA President of 28 September 2009, UN Doc.A/64/480 (6 October 2009). See also UK Note Verbale, UN Doc. A/HRC/13/G/17 (11 March 2010).

neighbouring BIOT prevail over the title claimed by Mauritius, the equidistant boundary agreed at the technical level by the UK/Maldives with respect to their 200-mile zones, could be formally adopted and extended over their shelves beyond 200 miles in the future.²⁸⁸ Therefore, Note Verbale of Great Britain of 9 August 2010 on the Maldives' Submission noted that this Submission did not take full account of the BIOT's 200-mile Fisheries and Environment Zones, both of which themselves respect boundaries agreed with Maldives at technical level. It also expressed full British commitment to formalising these boundaries and to making Recommendations by the CLCS on Maldives' Submission without prejudice to the position of the United Kingdom.²⁸⁹ Note Verbale of Mauritius of 29 October 2010 on the Maldives' 2010 Submission requested the UN Secretary-General to disregard Great Britain's Note Verbale of 9 August 2010 and it reaffirmed its own sovereignty over Chagos Archipelago, as previously reinforced in Mauritius' 2009 Preliminary Partial (Chagos Archipelago) Submission.²⁹⁰ In a follow-up to these Submissions of Mauritius and Maldives to the CLCS, a Joint Mauritius/Maldives Communique of 13 March 2011 declared the Maldives' opposition to the U.K. Chagos Marine Protected Area and announced their intention to make bilateral arrangements on their allegedly overlapping outer CS areas around the Chagos Archipelago, even though the ensuing Note Verbale of Mauritius of 24 March 2011 on the Maldives' 2010 Submission again protested this Submission in as much as the outer CS

²⁸⁸V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 472-473 at <http://www.brill.nl/maritime-political-boundaries-world>, specifying that the simplified equidistance agreed by the UK (BIOT)/Maldives at the technical level used as basepoints the southernmost feature in the Maldives - Addoo Atoll and the BIOT's Salomon Islands and Peros Banhos atolls in the north of Chagos Archipelago, but that it discounted its northerly feature - the low-tide Blenheim Reef.

²⁸⁹Notes Verbales Concerning Chagos Archipelago of Great Britain of 9 August 2010 and Mauritius of 29 October 2010 and 24 March 2011 with respect to Maldives' Submission of 26 July 2010, Section 5: Settled and Outstanding Delimitations [*supra* notes 51, 261-263] at http://www.un.org/Depts/los/clcs_new/submissions_files/mdv53_10/gbr_re_mdv_2010.pdf, http://www.un.org/Depts/los/clcs_new/submissions_files/mdv53_10/mus_re_mdv_2010.pdf, http://www.un.org/Depts/los/clcs_new/submissions_files/mdv53_10/mus_re_mdv_2011.pdf, http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mdv_53_2010.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm.

²⁹⁰*Id.*, Note Verbale of Mauritius Concerning Chagos Archipelago of 29 October 2010 with respect to Maldives' Submission of 26 July 2010, Section 5: Settled and Outstanding Delimitations at http://www.un.org/Depts/los/clcs_new/submissions_files/mdv53_10/mus_re_mdv_2010.pdf. On Joint Mauritius/Maldives Communique of 13 March 2011, see below.

beyond 200 miles depicted by Maldives was encroaching on the EEZ of Mauritius around the Chagos Archipelago.²⁹¹

On 21 December 2010 Mauritius - freshly launched as an International Arbitration Platform for Sub-Saharan Africa²⁹² - filed with Britain a provocative Application attempting to institute the UNCLOS Annex VII *Mauritius v. UK Chagos Marine Protected Area* Arbitration, which (territorial sovereignty) manifestly fell outside the UNCLOS jurisdiction.²⁹³ After Mauritius originally appointed ITLOS Judge Wolfrum (Germany) on 21 December 2010 and the UK replied by appointing ICJ Judge Christopher Greenwood QC on 29 January 2011, the appointments of the remaining 3 *Chagos* Arbitrators were stalled as expected and were - as it also was the case with Annex VII *Bangladesh v. India Bay of Bengal* Arbitration (presided over by Judge Wolfrum) - rechannelled to the ITLOS President, who naturally appointed on 25 March 2011 two more ITLOS Judges James Kateka (Tanzania) and Albert Hoffmann (South Africa) as *Chagos* Arbitrators, to be Presided over by Prof. Ivan A. Shearer

²⁹¹Maldives: We Back Chagos Position of 14 March 2011 at http://mauritiusnow.co.uk/article/view_article/maldives_we_back_chagos_position; Mauritius' Note Verbale of 24 March 2011 on Maldives' 2010 Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/mdv53_10/mus_re_mdv_2011.pdf, quoted *supra*; Opposition of Maldives to the UK sovereignty over Chagos could be the reason of subsequent Arrest Warrant issued for Maldives' ex-President Nasheed of 9 February 2012 at <http://www.un.org/apps/news/story.asp?NewsID=41192&Cr=maldives&Cr1>, <http://www.independent.co.uk/news/world/asia/warrant-issued-for-maldives-expresident-mohamed-nasheed-6699375.html>, <http://www.voanews.com/english/news/asia/Maldives-Issues-Arrest-Warrant-for-Former-Leader-139000744.html> & <http://www.bbc.co.uk/news/world-asia-16959808>.

²⁹²Mauritius Launched as an International Arbitration Platform for Sub-Saharan Africa and Beyond of 12-13 December 2010 at <http://www.globalarbitrationreview.com/news/article/28985/mauritius-blank-canvas/>, <http://www.miac2010.mu/Programme.aspx>, http://www.miac2010.mu/download/miac2010_brochure.pdf and 1 March 2011 at <http://www.globalarbitrationreview.com/news/article/29291/the-prime-minister-mauritius-arbitration/> and PCA/Mauritius Host Country Agreement at http://www.pca-cpa.org/shownews.asp?nws_id=296&pag_id=1261&ac=view and 1 March 2011 at <http://www.globalarbitrationreview.com/news/article/29293/the-pcas-man-mauritius/>.

²⁹³Mauritius Sues the UK over Chagos of 21 December 2010 at <http://theindependent.mu/2010/12/22/mauritius-takes-uk-govt-to-tribunal-over-chagos/>, http://mauritiusnow.co.uk/article/view_article/battle_joined_with_uk_over_chagos, <http://www.bbc.co.uk/news/world-africa-12058923>, <http://www.lemauricien.org/weekend/101226/co.htm> & <http://www.defimedia.info/articles/14313/1/Mauritius-drags-UK-to-court-/Page1.html>; and in French at: <http://www.lexpress.mu/story/19463-chagos-il-faut-aller-plus-loin.html>, <http://www.lematinal.com/news/international-news/9153-Chagos-Maurice-poursuit-la-Grande-Bretagne-en-justice.html> & <http://plus.lefigaro.fr/note/chagos-le-parc-marin-devant-le-tribunal-de-la-mer-20101227-362779>; 25 January 2011 at <http://www.lematinal.com/politique/9679-Chagos-Arvin-Boolell-confirme-que-lEtat-portera-plainte-devant-le-TIDM.html>; Chagos: Le recours a la CIJ depend des Britanniques of 28 January 2011, also noting that UK Optional Clause Declaration excluded the ICJ Jurisdiction at <https://www.lexpress.mu/story/20466-chagos-le-recours-a-la-cour-internationale-de-justice-depend-des-britanniques.html> & <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3>; Great Britain Appoints Judge Christopher Greenwood of 31 January 2011 at <https://www.lexpress.mu/story/20491-chagos-bancoult-accompagne-le-premier-ministre-au-sommet-de-l-union-africaine.html> & <http://french.people.com.cn/96852/7277704.html>.

(Australia).²⁹⁴ It may be that Mauritius will be withholding eventual replacement of its 2009 Preliminary Partial (Chagos Archipelago) Submission by its such actual Partial Submission until after the UNCLOS Annex VII *Mauritius v. UK Chagos Marine Protected Area* Tribunal renders its Award in the future.

France (Tromelin), France (Reunion), Seychelles, Mauritius, Tanzania, Comoros, Mozambique, South Africa, France (Iles Eparses/Scattered Islands), Madagascar

As was noted above, Tromelin Island (disputed but recently co-managed by France and Mauritius) was included - along with the Chagos Archipelago - in the 2005 Mauritius' Maritime Zones Act and Baselines and Delineating Lines Regulations, as protested by France's Note Verbale of 30 July 2009, and both Chagos and Tromelin were also included in Mauritius' 2009 Partial (Rodrigues Island Region) Submission and its 2009 Preliminary Partial (Chagos Archipelago Region) Submission to the CLCS.²⁹⁵ Under the 1980 France (Reunion)/Mauritius EEZ Delimitation Agreement, which gave full effect to all islands, islets

²⁹⁴ITLOS Press Release No.164 of 25 March 2011 at http://www.itlos.org/news/press_release/2011/press_release_164_en.pdf and PCA Cases at http://www.pca-cpa.org/showpage.asp?pag_id=1429 and UNCLOS Annex VII *Mauritius v. UK Chagos Marine Protected Area* Arbitrators Appointed of 27 March 2011 at <http://www.lematinal.com/news/international-news/10704-Arbitrators-Appointed-in-the-Mauritius-v-UK-Case-concerning-the-Chagos-Islands.html>, <http://intlawroundtable.com/2011/03/25/arbitral-tribunal-constituted-in-chagos-archipelago-dispute-between-mauritius-and-uk/>; UNCLOS *Mauritius v. UK Chagos* Arbitration, *ASIL Insights* of 5 April 2011 at <http://www.asil.org/insights110405.cfm>. For UNCLOS Annex VII *Bangladesh v. India Bay of Bengal* Arbitration, which has also been dominated by the ITLOS due to appointments of its Arbitrators (including again Judge Wolfrum and again Prof. Shearer) by the ITLOS President, see <http://www.pca-cpa.org/> and *supra* note 246; Mauritius Challenges ICJ Judge Christopher Greenwood as the *Chagos* Arbitrator of 31 May 2011 at <http://www.icj-cij.org/court/index.php?p1=1&p2=2&p3=1&judge=169>, <http://encountermauritius.gov.mu/portal/goc/pm/file/StatementChagosMarineProtectionArea.pdf>, <http://www.grandbaie.mu/2011/06/conseil-des-ministres-du-3-juin-2011/> & <https://www.lexpress.mu/story/24994-parc-marin-chagos-maurice-conteste-le-choix-de-christopher-greenwood-comme-arbitre.html>; China Announces the Indian Ocean Naval Base in Seychelles of 13 December 2011 <http://www.tamilnet.com/art.html?catid=79&artid=34698> & <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/seychelles/8953319/China-considers-Seychelles-military-base-plan.html>; The *Chagos* Tribunal's Decision of 30 November 2011 Rejects Challenge of Mauritius Against Judge Greenwood at http://www.pca-cpa.org/showpage.asp?pag_id=1429 and 4 January 2012 at <http://www.globalarbitrationreview.com/news/article/30056/greenwood-survives-challenge-chagos-islands-case/> & <http://www.asil.org/ilib120106.cfm>. In addition to the Annex VII *Chagos* Tribunal, Arbitrator Shearer was a member of the 2007 Annex VII *Guyana/Suriname (Jurisdiction and Merits)* Award, under Presidency of another ITLOS Judge Dolliver Nelson at <http://www.pca-cpa.org/> and *supra* notes 7 & 89-92. For Chagos Marine Protected Area, see *supra* note 283; Will Chagossians Be Guardians of Chagos Marine Protected Area? of 15 May 2011 at http://mauritiusnow.co.uk/article/view_article/new_bid_for_return_to_the_chagos & <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/mauritius/8514245/Exiled-Chagos-islanders-could-return-home-under-new-plans.html>.

²⁹⁵See *supra* note 284.

and rocks, the North-West terminus stopped where the uninhabited sandy Tromelin Island (of 1 square kilometre and 7 meters high), having an airstrip and a meteorological station and serving as a sea turtle sanctuary, started to influence the equidistant boundary; in January 2003, France and Mauritius reportedly agreed on a joint administration for Tromelin Island, but as was evident from its two 2009 Submissions referred to above, Mauritius did not surrender its claim to Tromelin.²⁹⁶ France's Partial (Reunion-Saint Paul-Amsterdam Islands) Submission of 8 May 2009 declared Absence of Disputes between France and any other states in the outer CS areas covered by this Partial Submission.²⁹⁷

After conclusion of Mauritius/Seychelles Maritime Delimitation Agreement of 29 July 2008, the Joint Mauritius/Seychelles Partial (Mascarene Plateau) Submission of 1 December 2008 informed the CLCS that their outer CS was not the subject of any dispute and that CLCS' consideration of their Joint Submission will not prejudice matters relating to the delimitation of boundaries between them and any other states.²⁹⁸ The ensuing Seychelles' Partial (Northern Plateau) Submission of 7 May 2009 did not involve any unresolved delimitations and it noted that the Seychelles planned to submit a third Preliminary Partial (Aldabra Island) Submission, which was indeed filed one day later, on 8 May 2009; the latter Submission indicated that there is a potential overlap between the area of the outer CS in the

²⁹⁶1980 France (Reunion)/Mauritius EEZ Delimitation Agreement, in: ASIL/IMB Vol.II (1993), Report No.6-5, at 1353-1361 at <http://www.brill.nl/international-maritime-boundaries-3>; France's 1978 Decree No.78-146 on Tromelin and the Islands of the Mozambique Channel and Extraplac at www.extraplac.fr/FR/extensions/Tromelin.php; Scattered Islands in the Indian Ocean at http://en.wikipedia.org/wiki/Scattered_Islands_in_the_Indian_Ocean; Mauritius Disputes of 24 September 2003 at www.afrol.com/News/mas003_chagos_anjouan.htm; *supra* note 284. For 2005 France (Reunion)/Madagascar Maritime Delimitation Agreement, see *infra* note 301.

²⁹⁷France's Partial (Reunion-Saint Paul-Amsterdam Islands) Submission of 8 May 2009, Section 4: Absence of Disputes at www.un.org/Depts/los/clcs_new/submissions_files/submission_fra_40_2009.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; www.extraplac.fr/FR/extensions/Reunion.php, www.extraplac.fr/FR/extensions/Amsterdam.php & www.extraplac.fr/FR/extensions/StPaul.php; *supra* note 3.

²⁹⁸Joint Mauritius/Seychelles Partial (Mascarene Plateau) Submission of 1 December 2008, Section 5: Outstanding Maritime Delimitations and CLCS Recommendations of 30 March 2011 at www.un.org/Depts/los/clcs_new/submissions_files/submission_musc.htm & http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Mauritius/Seychelles Maritime Delimitation Agreement of 29 July 2008, based on equidistant boundary, in: ASIL/IMB Vol.VI (2011), Report No.6-22 (Prescott and Triggs), at 4391 at <http://www.brill.nl/international-maritime-boundaries-2>, www.dur.ac.uk/ibru/news & Extraplac at www.extraplac.fr/FR/extensions/Tromelin.php; Statements by the CLCS Chairman, UN Docs CLCS/64 (1 October 2009), CLCS/66 (30 April 2010) and CLCS/70 (11 May 2011) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; *supra* note 3.

Aldabra Island Region of the Seychelles and the outer CS area claimed by Tanzania.²⁹⁹ Tanzania's Preliminary Submission filed with the CLCS one day earlier, on 7 May 2009, specified that the Seychelles had consented to this Tanzania's Submission on the understanding that it was without prejudice to bilateral delimitation of their overlapping outer CS areas, as was confirmed by Tanzania's final Submission of 18 January 2012, which added that Seychelles/Tanzania EEZ/CS Delimitation Agreement of 23 January 2002 was supplemented by their Memorandum of Understanding of 2 May 2011 spelling out a no prejudice to each Submission pursuant to UNCLOS Article 76(10) in areas where there could be potential overlaps.³⁰⁰

Madagascar, whose 2011 Submission is further referred to below, has been disputing until today as many as four island groups - the Iles Eparses (Scattered Islands) - with France, on whose behalf they are collectively administered by the prefect of Reunion³⁰¹ and are classified as nature reserves; Scattered Islands have important implications for the future maritime delimitation in the region and they leave most of Madagascar/Mozambique boundary of some 870 miles in the Mozambique Channel (except some 75 miles already delimited)

²⁹⁹Seychelles' Partial (Northern Plateau) Submission of 7 May 2009, Section 2: Partial Submission, Section 6: Outstanding Delimitations at www.un.org/Depts/los/clcs_new/submissions_files/submission_syc_39_2009.htm & http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Seychelles' Preliminary Partial (Aldabra Island) Submission of 8 May 2009, Section 5: Undelimited Maritime Boundaries http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/syc2009preliminaryinfo.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; Statement by the CLCS Chairman, UN Doc. CLCS/64 (1 October 2009) at www.un.org/Depts/los/; Aldabra at <http://en.wikipedia.org/wiki/Aldabra>; *supra* note 3.

³⁰⁰Tanzania's Preliminary Submission of 7 May 2009, Sections 3 & 6: Maritime Delimitations at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/tza_2009_preliminaryinfo.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; Tanzania's Submission of 18 January 2012, Section 5: Maritime Delimitations and Absence of Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_tza59_2012.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; 2002 Seychelles/Tanzania EEZ/CS Delimitation Agreement at <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/TZA.htm>; *supra* notes 3 & 279.

³⁰¹See also France (Reunion)/Madagascar Maritime Delimitation Agreement of 14 April 2005, *UN Law of the Sea Bulletin* 21-25 (2010 No.71); ASIL/IMB Vol.VI (2011), Report No.6-25 (Prescott and Triggs), at 4405 at <http://www.brill.nl/international-maritime-boundaries-2>; France's 2009 Partial (Reunion-Saint Paul - Amsterdam) Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_fra_40_2009.htm, *supra* note 297.

undefined.³⁰² The Scattered Islands include two small sandy islands possessing meteorological stations and small landing strips - Ile Juan de Nova (of 4.4 square kilometres) which lies 280 miles from the northern entrance of the Channel and Ile Europa (of 28 square kilometres) which lies 340 miles further south, with those islands commanding an area of 85,000 square miles within lines of equidistance; Bassas da India Group (of 0.2 square kilometre, surrounded by reefs) which lies about 60 miles north-west of Ile Europa and of which the high-tide status is questionable; and the fourth is the Iles Glorieuses Group (of 5 square kilometres), by owning of which Madagascar would gain an area of 12,870 square miles.³⁰³

³⁰²See data on all those islands at http://en.wikipedia.org/wiki/Europa_Island & Islands Controlled by France in the Indian and Pacific Oceans at www.wikinfo.org/wiki.php?title=Islands_controlled_by_France_in_the_Indian_and_Pacific_oceans; Madagascar Oil Survey of 4 October 2005 at www.rigzone.com/news/article.asp?a_id=25764 and 6 February 2006 at www.rigzone.com/news/article.asp?a_id=29180; Mozambique Oil of 17 February 2006 at www.rigzone.com/news/article.asp?a_id=29556; 26 October 2009 at www.rigzone.com/news/article.asp?a_id=81785; 22 March 2010 at: www.rigzone.com/news/article.asp?a_id=89809; Force Majeure in Madagascar Oil of 23 March 2011 at http://www.rigzone.com/news/article.asp?a_id=105285 & http://www.rigzone.com/news/region.asp?r_id=17; ICC and ICSID *Madagascar Oil (Bermuda) v. Madagascar* Cases of 6 May 2011 at <http://www.globalarbitrationreview.com/news/article/29442/madagascar-faces-icc-icsid-oil-claims/>, <http://af.reuters.com/article/topNews/idAFJ0E7450FJ20110506>, <http://www.iii.co.uk/investment/detail?code=cotn:MOIL.L>; Madagascar Oil Resolves Dispute with Government of 24 June 2011 at http://www.rigzone.com/news/article.asp?a_id=108383 & http://www.ibtimes.com/articles/169250/20110624/madagascar-oil-resolves-dispute-with-madagascar-govt.htm?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+ibtimes%2Ftech+%28IBTimes.com+RSS+Feed+-+Technology%29; Madagascar Oil of 24 June 2011 at <http://www.telegraph.co.uk/finance/newsbysector/energy/8597540/Madagascar-Oil-to-return-to-AIM-market.html>; Iles Eparses Transnational at www.theodora.com/wfbcurent/iles_eparses/iles_eparses_issues.html.

³⁰³See France's 1976 EEZ Act and the 1978 Decrees No.78-146 - Tromelin and the Islands of the Mozambique Channel (Tromelin, Glorious, Juan-de-Nova, Europa and Bassas-da-India) *as reprinted in UN Law of the Sea Bulletin* 16-21 (2010 No.71), No.78-148 - Reunion, No.78-149 - Mayotte, *reprinted in* R.W. Smith, *Exclusive Economic Zone Claims, An Analysis and Primary Documents* (2005) 151-170; Extraplac at <http://www.extraplac.fr/FR/extensions/Glorieuses.php> & www.extraplac.fr/FR/extensions/geographie.php; Subdivisions of France at http://en.wikipedia.org/wiki/Administrative_divisions_of_France, classifying all these French territories into 6 categories of overseas administrative divisions; French Overseas Departments and Dependencies at http://www.jag.navy.mil/organization/documents/mcrm/french_dependencies.pdf; Madagascar's 1985 Ordinance No.13 on the Maritime Zones' Limits and Tables of Charts and Geographical Coordinates at www.un.org/Depts/los/ and Paper by UNDOALOS Senior Officer, Dr. Andre Tahindro, "Implementation of the UNCLOS in the Indian Ocean Region: The Case of Madagascar", *African Yearbook of International Law* (2006) 349, 380-381, stating that upon resolution of territorial disputes with France, Madagascar would effect the respective maritime delimitations involving these islands; exact boundary calculations made depending on different sovereignty over these islands by V. Prescott, "Indian Ocean Boundaries", in: ASIL/IMB Vol.V, at 3452, 3460-3462 (2005) at <http://www.brill.nl/international-maritime-boundaries>, repeated in: V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 466-470 & Figure 19.3: Indian Ocean at 636 (2005) at <http://www.brill.nl/maritime-political-boundaries-world>; postponement by UNGA of its consideration of traditional item on the "Question of the Comorian Island of Mayotte" and on deferral to the 64th UNGA in 2009 of an item on the Question of the Malgasy Islands of Glorieuses, Juan de Nova, Europe and Bassas da India, in *Press Release GA/10746* of 19 September 2008 at www.un.org/News/Press/docs//2008/ga10746.doc.htm.

France has also disputed with Comoros over the inhabited Island of Mayotte, which is located between Glorieuses and Juan de Nuova and which became France's 101st Department in March 2009, followed by Comoros' Preliminary Submission to the CLCS of 7 May 2009 and by its having started to claim Mayotte back in March 2011.³⁰⁴

In its Preliminary Submission to the CLCS of 11 May 2009, Mozambique noted that Madagascar (like South Africa) had no objections to Mozambique's Submission and that Mozambique had no objections to the future Submission of Madagascar, which both Submissions and their consideration by the CLCS were without any prejudice to the future Mozambique/Madagascar (and Mozambique/South Africa) delimitations.³⁰⁵ Regarding Bassas da India and Europa of Iles Eparses/Scattered Islands referred to above, the Preliminary Submission of Mozambique pointed out that any Mozambique/Madagascar negotiations or agreements on EEZ delimitation are pending the resolution of France/Madagascar territorial dispute, which, however, was not relevant for delimitation of the outer continental shelf beyond 200 miles. The final Submission of Mozambique of 7 July 2010 drew one of 92 fixed points, i.e., Point MOZ-OL-01 as the intersection point of the Gardiner line and the 200-mile line measured from the TS baseline of Europa Island, but it reserved Mozambique's right, at a later stage, to submit further data which could make this Point MOZ-OL-01 (and two other Points) redundant.³⁰⁶

³⁰⁴V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 470 & Figure 19.3: Indian Ocean at 636 at <http://www.brill.nl/maritime-political-boundaries-world>, referring to equidistance between Comoros and Glorieuses and inhabited Mayotte Island, which is disputed by Comoros/France, *id.* at 282, <http://en.wikipedia.org/wiki/Mayotte> and the 2000 French-Mahorais Agreement of 8 March 2005 at www.afrol.com/articles/15854; UNSG Kofi Annan's Message on Comoros (facing Presidential election in 2006) of 8 December 2005 at www.un.org/News/Press/docs/2005/sgsm10255.doc.htm; postponement by UNGA of its consideration of traditional item on the "Question of the Comorian Island of Mayotte", in *Press Release GA/10746* of 19 September 2008 at www.un.org/News/Press/docs//2008/ga10746.doc.htm; Mayotte Votes to Become 101st Department of France of 29 March 2009 at www.telegraph.co.uk/news/worldnews/africaandindianocean & <http://news.bbc.co.uk/2/hi/europe/7970450.stm>; Comoros' Preliminary Submission to the CLCS of 7 May 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/com2009preliminaryinformation.pdf & http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; Extraplac at <http://www.extraplac.fr/FR/extensions/Mayotte.php> & www.extraplac.fr/FR/extensions/geographie.php; Comoros Wants Mayotte Back of 3 March 2011 at <http://www.afrol.com/articles/37509>; *supra* note 3.

³⁰⁵Mozambique's Preliminary Submission of 11 May 2009, Section 3.5: Issues of Maritime Delimitation and Section 3.6: Pending Tasks and Annexes: Madagascar/Mozambique Agreed Minutes and Harmonization of the Extended CS of 30 January 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/moz2009preliminaryinformation.pdf & www.un.org/Depts/los/clcs_new/commission_preliminary.htm; Mozambique's Submission Assisted by the Commonwealth of 2 November 2009 at <http://allafrica.com/stories/printable/200911021770.html>; Mozambique and Madagascar Oil, *supra* note 302.

³⁰⁶Mozambique's Submission of 7 July 2010, Section 5: The Outer Limit of the Extended Continental Shelf of Mozambique, listing Point MOZ-OL-01 measured from Europa Island's TS baselines as possibly getting redundant in the future at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_moz_52_2010.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Statement by the CLCS Chairman, UN Doc. CLCS/70 (11 May 2011) at www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3.

Mozambique's 2010 Submission specified that its outer continental shelf comprises an area of about 136,163.8 square kilometers beyond 200 miles from its TS baselines, with due consideration of the outstanding delimitations with South Africa and Madagascar, which both indicated to Mozambique - in accordance with UNCLOS Article 76(10) and Article 9 of Annex II, as well as with Rule 46 and Annex I of the CLCS Rules - that they had no objections to Mozambique's 2010 Submission upon the understanding that this was without prejudice to their future maritime boundary delimitations.³⁰⁷ Similar assurances in regard of Mozambique were included in Submission filed with the CLCS on 29 April 2011 by Madagascar, whose outer continental shelf beyond 200 miles from the TS baselines comprises an area of about 860,900 square kilometres.³⁰⁸

A few days prior to filing by Mozambique of its 2009 Preliminary Submission, which like the subsequent Mozambique's 2010 Submission, applied mutual prior consent of both South Africa and Madagascar for each of these Mozambique's Submissions discussed above, South Africa's Submission of 5 May 2009 informed the CLCS about unresolved outer CS boundaries of South Africa - in the east with Mozambique and in the west with Namibia, which both also consented to the CLCS' consideration of South Africa's Submission without prejudice to their future maritime delimitations.³⁰⁹

³⁰⁷*Id.*, Mozambique's 2010 Submission, Section 3: Outstanding Maritime Delimitations and Section 5: The Outer Limit of the Extended Continental Shelf of Mozambique, noting that Point MOZ-OL-92 is located on the 200-mile line measured from the TS baseline of South Africa at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_moz_52_2010.htm. See also 2005 France (Reunion)/Madagascar Maritime Delimitation Agreement and France's 2009 Partial (Reunion-Saint Paul - Amsterdam) Submission, *supra* notes 297, 301.

³⁰⁸Madagascar's Submission of 29 April 2011, Section 3: Outstanding Maritime Delimitations and Annexes: Madagascar/Mozambique Agreed Minutes and Harmonization of the Extended CS of 30 January 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mgd_56_2011.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Statement by the CLCS Chairman, UN Doc. CLCS/72, paras 23-26 (16 September 2011) at www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3. See also Mozambique and Madagascar Oil, *supra* note 302.

³⁰⁹South Africa's Submission of 5 May 2009, Section 5: Absence of Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_zaf_31_2009.htm, http://www.un.org/Depts/los/clcs_new/submissions_files/zaf31_09/zaf2009executive_summary_appendix1.pdf, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Statement by the CLCS Chairman, UN Doc. CLCS/68 (17 September 2010) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; South Africa's 1994 Maritime Zones Act No.15, *UN Law of the Sea Bulletin* 75 (1996 No.32) at www.un.org/Depts/los/; J.R.V. Prescott, "Publication of a Chart Showing the Limits of South Africa's Maritime Claims" (1999) 14 *IJMCL* 557-565 at <http://brill.nl/estu>; R.T. Wonnacott, "The Determination and Accuracy of the Maritime Boundaries and Zones of South Africa" at www.gmat.unsw.edu.au/ablos/ABLOS01Folder/WONNACOTT.PDF; E. Egede, "The Outer Limits of the Continental Shelf and African States" (2004) 35 *ODIL* 157, 162, 170; South Africa Set to Increase Its Marine (Continental Shelf) Territory of 21 March 2006 at www.sabcnews.com/south_africa/general/0,2172,124144,00.html & www.pretorianews.co.za/index.php?fSectionId=1651&fArticleId=3167497, noting that France/South Africa have completed a joint geophysical survey on the submarine Del Cano Rise between these two island groups and that for the purpose of preparing its Submission to the CLCS, South Africa also cooperates with Mozambique and Namibia; *supra* note 3. On France/South Africa (Crozet & Prince Edward Islands) and South Africa/Namibia outer CS, see next section in this article *infra*.

South and West Africa

South Africa (Prince Edward)/France (Crozet), South Africa, Namibia, Angola, DR Congo, Republic of Congo

In early 2006, France and South Africa (which estimated 65% increase of its existing EEZ area of 1,5 million square kilometres) have completed a joint geophysical survey on the submarine Del Cano Rise between the two island groups; this was followed by France/South Africa Joint Partial (Crozet and Prince Edward Islands) Submission of 6 May 2009, which informed the CLCS that their outer CS covered by this Joint Submission was not the subject of any dispute between them and any other state.³¹⁰ Both France's Crozet and South Africa's Marion and Prince Edward Islands belong to the so-called Sub-Antarctic Islands, which are located north of 60° S and therefore fall outside the ambit of the 1959 Antarctic Treaty area, but the continental shelves of which may extend south of this latitude. In addition, Sub-Antarctic Islands include: France's Kerguelen Islands, Norway's Bouvet Island, and Britain's South Georgia and the South Sandwich Islands, Shag Rocks and the Falkland Islands/Malvinas (also claimed by Argentina); Australia (having the largest claim to Antarctic territory), France, Norway and Britain, along with New Zealand, Argentina and Chile are the seven Antarctic claimant states, whose claims to the Antarctic territory and the appurtenant

³¹⁰France/South Africa Joint Partial (Crozet and Prince Edward Islands) Submission to the CLCS of 6 May 2009, Section 4: Absence of Disputes at www.un.org/Depts/los/clcs_new/submissions_files/submission_frazaf_34_2009.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; UNSG Kofi Annan's Visit to South Africa (Chairman of Group 77) on 13-15 March 2006 at www.un.org/News/Press/docs/2006/sgt2480.doc.htm; South Africa Set to Increase Its Marine (Continental Shelf) Territory of 21 March 2006 at www.sabcnews.com/south_africa/general/0,2172,124144,00.html & www.pretorianews.co.za/index.php?fSectionId=1651&fArticleId=3167497, noting that France/South Africa have completed a joint geophysical survey on the submarine Del Cano Rise between these two island groups; Statement by the CLCS Chairman, UN Doc. CLCS/68 (17 September 2010) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; France's Extralac Submission to the CLCS at www.extrapolac.fr/FR/extensions/geographie.php, www.extrapolac.fr/FR/extensions/Crozet.php; *supra* notes 3 and 309; and the pending France/South Africa maritime delimitation, *infra* note 314. On the pending Namibia/South Africa delimitation and the 2002 Angola/Namibia Treaty, see remarks in this section *infra*.

200-mile zones and/or the continental shelves partially overlap and are beyond the scope of the present article.³¹¹

All the Sub-Antarctic Islands specified above - except Falklands/Malvinas located outside the Antarctic Convergence Area - are covered by the 1980 Canberra Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), which was concluded in parallel to the final stage of UNCLOS III *travaux*. The CCAMLR Final Act includes the Chairman's Statement "regarding the application of the Convention to the waters adjacent to Kerguelen and Crozet Islands over which France has jurisdiction and to waters adjacent to other islands within the area to which this Convention applies and over which the existence of State sovereignty is recognized by all Contracting Parties"; this CCAMLR Chairman's Statement gave France - in view of its then freshly established 200-mile EEZ around the French Southern and Antarctic Territories - and other states concerned considerable margin of discretion with respect to fisheries measures in maritime zones around all the respective islands north of 60° S referred to above.³¹²

The rocky Sub-Antarctic Crozet Islands (France) is comprised of two groups - the L'Occidental (Pigs/Ile des Cochons of 67 square kilometres, Penguin/Ile des Pingouins of 3 square kilometres and the 14 tiny Ilots des Apôtres, of which the largest is of 1.2 square kilometres and which have an area of 2 square kilometres in total) and some 60 miles to the east, Crozets also comprise L'Oriental (Ile de la Possession and Ile de l'Est of 150 and 130 square kilometres), which has been a site of a permanent Albert Faure research station manned

³¹¹1959 Antarctic Treaty [in force: 23 June 1961], 402 UNTS 71 & (1980) 19 ILM 860; 1995 Measures Relating to Furtherance of the Principles and Objectives of the Antarctic Treaty, in: (1996) 35 ILM 1165; Oude Elferink, "The Continental Shelf of Antarctica" (2002) 17 IJMCL 485, *supra* note 3, at 503-506 and Maps at 487, 504 at <http://brill.nl/estu>; and Oude Elferink, "The Continental Shelf in the Polar Regions" (2009) XL NYIL 121-181, *supra* notes 167 & 169; U.S. Department of State's Handbook of the Antarctic Treaty System (ATS) at www.state.gov/g/oes/rls/rpts/ant/; ATS at www.antarctica.ac.uk/About_Antarctica/Treaty/ & http://en.wikipedia.org/wiki/Antarctic_Treaty_System; Antarctica Territorial Claims Map at www.wikinfo.org/wiki.php?title=Antarctica; Sub-Antarctic Islands at www.wikinfo.org/wiki.php?title=Sub-antarctic_islands. On Argentina and UK Submissions concerning Sub-Antarctic Falklands/Malvinas Islands, see *supra* notes 115-120.

³¹²1980 CCAMLR [in force: 7 April 1982, 1329 UNTS 47 & (1980) 19 ILM 837; www.ccamlr.org/], including Convention and Chairman's Statement at www.ccamlr.org/pu/e/e_pubs/bd/toc.htm; France's 1978 Decree No.78-144 - French Southern and Antarctic Territories/Terres Australes et Antarctiques Francaise (St. Paul and Amsterdam, Crozet and Terre Adelie/Kerguelen), in Smith (2005), *supra* note 303; A. Aust, *Modern Treaty Law and Practice* (Cambridge 2000) 189-190, listing CCAMLR Chairman's Statement as an instance illustrating "any agreement relating to the treaty" which is covered by the rule of the ordinary meaning codified in Article 31(2)(a) of the 1969 UN Vienna Convention on the Law of Treaties [another instance of such an agreement is the UNCLOS III Final Act's Annex II discussed in this article before]; Oude Elferink, "The Continental Shelf of Antarctica" (2002) 17 IJMCL 485, *supra* note 3, at 491-492 at <http://brill.nl/estu>, also noting at 493-495, that the 1988 Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA) and its 1991 Madrid Protocol on Environmental Protection [in force: 14 January 1998, 402 UNTS 71; (1988) 27 ILM 859; (1991) 30 ILM 1455; (1993) 32 ILM 505; www.antarctica.ac.uk/About_Antarctica/Treaty/protocol.html] do not extend to any continental shelf appurtenant in accordance with international law (i.e., UNCLOS Article 76) to Sub-Antarctic Islands situated to the north of 60° S.

by 18-30 people since 1963, with Crozets being CCAMLR Subarea 48.3 and a nature reserve since 1983.³¹³

The Sub-Antarctic Crozet Islands lie about 520 miles (i.e., more than double 200-mile limit) apart from South Africa's (Antarctic non-claimant's) Marion and Prince Edward Islands (twin peaks of a submerged volcano which form CCAMLR Subareas 58.6-58.7) in the Southern Indian Ocean, but their continental shelves beyond 200 miles could overlap and could thus require a France/South Africa delimitation of the respective shelves, which could be strongly influenced by the position of the South West Indian Ridge and the Del Cano Rise, at the junction of which Marion/Prince Edward Islands lie, while Crozets lie on the Del Cano Rise, some 500 miles south of the Ridge.³¹⁴ The volcanic and glaciated Marion Island (19 by 12 kilometres and 1,230 meters high, with an area of 290 square kilometres) and Prince Edward Island (490 meters high, with an area of 45 square kilometres) lie 12 miles apart, some 955 miles southeast of Port Elizabeth on mainland South Africa, with Marion Island having a research station running a variety of programmes in the natural sciences.³¹⁵

As was already noted earlier, South Africa's 2009 Submission informed the CLCS of the unresolved outer CS boundaries in the west with Namibia, which has consented to the CLCS' consideration of South Africa's Submission without prejudice to their future maritime

³¹³Crozet Islands at www.wikinfo.org/wiki.php?title=Crozet_Islands; France's 1978 Decree No.78-144 (St. Paul, Amsterdam, Crozet and Kerguelen), in Smith (2005), *supra* note 303 and Extraplac at www.extraplac.fr/FR/extensions/Crozet.php; French Southern and Antarctic Territories at www.discoverfrance.net/Colonies/Antarctic.shtml; Indian and Pacific Oceans' Islands of France at www.wikinfo.org/wiki.php?title=Islands_controlled_by_France_in_the_Indian_and_Pacific_oceans.

³¹⁴South Africa's Press Information on Extended Continental Shelf Claim of 13 December 2002 (www.cef.org.za/petrosa/), noting that were it to be technically feasible for South Africa to claim the Agulhas Plateau and the regions surrounding the 200-mile radiu of Marion and Prince Edward Islands, South Africa could claim an extended shelf for 73% or 3,920 kilometres of its existing EEZ line which would add 700,000 square kilometres and would increase its ocean floor area to 1.4 million of square kilometres in total; and calculations of the future France/South Africa equidistance-based boundary delimiting shelves beyond 200 miles of Crozet Islands and Marion and Prince Edward Islands by J.R.V. Prescott, "Publication of a Chart Showing the Limits of South Africa's Maritime Claims" (1999) 14 *IJMC* 557-565 at <http://brill.nl/estu>, including Map at 564 and noting at 565, that particular attention will need to be paid in South Africa's CLCS Submission to the nature of the ridge on which Marion/Prince Edward Islands stand; if they are located on an oceanic ridge, South Africa's claim would be restricted under UNCLOS Article 76(6) to 350 miles. However, as Crozet Plateau lies east of the South African islands, if it could be demonstrated that they are associated with that Plateau, it might - in Prescott's view - still be possible to use the line 100 miles seawards of the 2,500 meter isobath in pursuance of Article 76(5). See also V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 207-209 & Figure 19.3: Indian Ocean at 636 at <http://www.brill.nl/maritime-political-boundaries-world>; 2009 France/South Africa Joint Partial (Crozets and Prince Edward Islands) Submission to the CLCS, Section 4: Absence of Disputes at www.un.org/Depts/los/clcs_new/submissions_files/submission_frazaf_34_2009.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm, quoted *supra*.

³¹⁵Prince Edward Islands at www.wikinfo.org/wiki.php?title=Prince_Edward_Islands, noting that both these islands are often referred to as "Prince Edward Islands"; Marion Island at www.btinternet.com/~sa_sa/marion_island/marion_island.html & <http://marion.sanap.org.za>; ATS at South African MFA at www.dfa.gov.za/foreign/Multilateral/inter/ats.htm. See also Bouvet Island at http://en.wikipedia.org/wiki/Bouvet_Island, suggesting that a nuclear bomb test conducted between Prince Edward and Bouvet on 22 September 1979 is believed to have been carried out by South Africa.

delimitation.³¹⁶ This was confirmed in Namibia's Submission of 12 May 2009, which noted their boundary "commencing at the mouth of the Orange River, and ascending the north bank of that River" pursuant to the UK/Germany 1890 Berlin Treaty Respecting the Spheres of Influence of the two Countries in Africa (Article III(1)), being still a subject of negotiations between Namibia and South Africa; Namibia's Submission also noted the preparation of an Agreement with South Africa concerning consideration of their two 2009 Submissions by the CLCS without prejudice for their future maritime boundary delimitation.³¹⁷ It may be added that the 12 Penguin Islands were together with Walvis (Conception) Bay (of 1,124 square kilometres) peacefully reintegrated into Namibia under the 1994 Namibia/South Africa Walvis Bay and Penguin Islands Agreement; the largely barren Penguins, which supported guano harvesting in the 1840s and have in more recent times been used by fishermen, are scattered along a distance of 330 kilometres (from the Orange River in the south to Walvis Bay in the north) in the oil/fish-rich area within 6 miles from Namibian mainland and include: the largest Possession (of 90,3 hectares), Penguin and Seal Islands (both located within Namibia's Luderitz Bay), Ichaboe Island (north of Luderitz), Mercury, Long Island, Halifax, Albatros

³¹⁶South Africa's Submission of 5 May 2009, Section 5: Absence of Disputes at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_zaf_31_2009.htm and the pertaining literature quoted, *supra* notes 309, 314.

³¹⁷Namibia's Submission of 12 May 2009, pp.2-3: Boundaries of Adjacent States at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_nam_50_2009.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Statement by the CLCS Chairman, UN Doc. CLCS/66 (30 April 2010) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; *supra* note 3.

Rock, Pomona, Hollamsbird (of 1,1 hectares), Plumpudding (of 0,8 hectares) and Sinclair (800 by 200 yards).³¹⁸

Regarding the Namibia/Angola maritime boundary, Namibia's 2009 Submission stated that under the Portugal/Germany 1886 Lisbon Declaration Respecting the Delimitation of the Possession of the two Countries and Their Respective Spheres of Influence in the South Africa, this boundary is to "follow the course of the River Kunene from its mouth", and that certain other issues were covered by Portugal/South Africa Agreement of 22 June 1926, including its Article II that the boundary is "declared and agreed to be the middle line of the Kunene River, that is to say, the line drawn equidistant from both banks, from the mouth of the Kunene River up to a point at the Rua Cana Falls."³¹⁹ Subsequently, the boundary with Angola from the mouth of the Kunene River was delimited in the 2002 Angola/Namibia Maritime Borders Treaty (followed by demarcation in 2005), which also involves coastal islands and rocks, even though the Treaty (Article IV and Sketch-Map) does not make it clear

³¹⁸UNGA Resolution 32/9 D of 4 November 1977 and UNSC Resolution 432 of 27 July 1978, which declared the renewed South Africa's claim to Walvis Bay and Penguin Islands as "null and void"; Namibia Chronology at www.worldstatesmen.org/Namibia.htm; 1994 Namibia/South Africa Walvis Bay Agreement at www.un.org/Depts/los/; (1993) 32 ILM 1152 [text] 1470 [Notice] and 2004 Statement of Namibia's President at www.grnnet.gov.na/News/Archive/2004/march/independence_reintegration_rpt.htm; Walvis Bay at http://en.wikipedia.org/wiki/Walvis_Bay. The distances from Penguins to Namibia's coast are as follows: Hollamsbird - 9.7 km, Ichaboe - 1.3 km, Possession - 1.6 km, Mercury - 0.8 km, Long - 900 metres, Plumpudding - 549 metres, Penguin and Seal - 183 metres, Pamona - 137 metres, Sinclair and Halifax - 46 metres. On the 1911 *Germany/UK Walfish Bay Boundary Award* [(1909) 3 AJIL Supp. 306; No.162/Stuyt], see *Eastern Greenland Pleadings*, PCIJ Series C, No.62, 437-438, 463, 464 [Norway's Counter-Memorial], No.63, 733, 818 [Denmark's Reply]; *Gulf of Maine Pleadings*, Vol.II, 98 [US Memorial], Vol.III, 201 [Canada's Counter-Memorial]; *Qatar v. Bahrain (Merits)* Joint Dissenting Opinion of Judges Bedjaoui, Ranjeva, Koroma, ICJ Reports 2001, 175, para.94 n.27; 2009 *North-South Sudan Abyei* Final Award, para.378 n.763 at www.pca-cpa.org. See also D.B. Hamman, "Prologue to the Penguin Islands", *Sea Changes* (Cape Town, 1992 No.14), 68-90, including Map, noting at 85, that only Possession, Ichaboe and Halifax would qualify as Article 121(1)-(2) islands, while the remaining islets would fall into Article 121(3) rocks category; D.J. Devine (Cape Town), *Marine Law Developments in Namibia*, (1993) 8 IJMCL 471-495 at <http://brill.nl/estu>; K. Dierks, "Namibia's Walvis Bay Issue" (2000) at www.klausdierks.com/Walvis%20Bay/; R.T. Wonnacott, "South Africa's Maritime Boundaries" (2001) at www.gmat.unsw.edu.au/ablos/ABLOS01Folder/WONNACOTT.PDF; L.E. Moller, "The Outstanding Namibian Maritime Boundaries with Angola and South Africa" (2003) 18 IJMCL 241-260, esp. 244-246, including Map at <http://brill.nl/estu>; Orange Basin's Oil Offshore South Africa and Namibia of 27 March 2006 at www.namibian.com.na/2006/March/national/0612CF4D69.html; Angola/Namibia/South Africa Marine Resources Committee of 2 April 2006 at www.angolapress-angop.ao/noticia-e.asp?ID=429790 and Map at <ftp://ftp.fao.org/docrep/fao/012/i1116e/i1116e02c.pdf>; Namibia Oil (close to South Africa) of 7 July 2009 at www.rigzone.com/news/article.asp?a_id=78000 & *id.* *id*=78004; 10 July 2009, *id.* *id*=78108; 6 September 2010 at www.rigzone.com/news/article.asp?a_id=98311.

³¹⁹Namibia's Submission of 12 May 2009, pp.2-3: Boundaries of Adjacent States at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_nam_50_2009.htm, quoted *supra*; River Cunene at http://en.wikipedia.org/wiki/Cunene_River.

to what islands it applies.³²⁰ Angola's 2009 Preliminary Submission does not refer to these Angola/Namibia Treaties, only to Angola's undelimited boundaries with the Republic of Congo and Gabon referred to below.

In particular, in the course of an exchange of views between Angola and the Democratic Republic of Congo (DRCongo - Kinshasa, previously Zaire), in parallel to Preliminary Submission of the Republic of Congo's (Brazzaville), Preliminary Submission of 12 May 2009 of Angola [hoping to file its actual Submission by the end of 2013] stated that in view of undelimited Angola/Republic of Congo and Angola/Gabon boundaries, the CLCS Recommendations on Angola's Submission are to be pursuant to UNCLOS Article 76(10)

³²⁰*Id.*; 2002 Angola/Namibia Treaty, ASIL/IMB Vol.V (2005), Report No.4-13, at 3709-3726, noting at 3712-3714, that the mouth of the River Cunene contains a large island and a small islet lying just to its west, sovereignty over neither of which is specified at <http://www.brill.nl/international-maritime-boundaries>; River Cunene at http://en.wikipedia.org/wiki/Cunene_River; R.T. Wonnacott, "South Africa's Maritime Boundaries" (2001) at www.gmat.unsw.edu.au/ablos/ABLOS01Folder/WONNACOTT.PDF; L.E. Moller, "The Outstanding Namibian Maritime Boundaries with Angola and South Africa", (2003) 18 IJMCL 241, 252-254, not specifying which and whose coastal islands are involved under that Treaty either at <http://brill.nl/estu>; Statements on Completion of Angola/Namibia Demarcation of 3 February 2005 by Namibia's President at www.grnnet.gov.na/News/Archive/2005/february/week1/maritime_rpt.htm and by Minister of Lands at www.grnnet.gov.na/News/Archive/2005/february/week1/markers_rpt.htm; Angola/Namibia Draw Sea Border Line of 7 February 2005 at www.namibian.com.na/2005/February/national/0593378744.html; Angola/Namibia/South Africa Committee of 2 April 2006 at www.angolapress-angop.ao/noticia-e.asp?ID=429790 and Map at <ftp://ftp.fao.org/docrep/fao/012/i1116e/i1116e02c.pdf>. See also ICC Namibia Airport Dispute of 16 August 2011 at <http://www.globalarbitrationreview.com/news/article/29760/namibian-airport-dispute-lands-icc/>.

without prejudice to Angola's future maritime delimitations.³²¹ It is not clear whether the reference in Angola's Preliminary Submission to "Republic of Congo" means only Congo-Brazzaville or also Angola's other direct neighbour, the Democratic Republic of Congo (Kinshasa).³²² The Republic of Congo's (Brazzaville) filed its Preliminary Submission on 11 May 2009 indicating that it was without prejudice to maritime delimitations with neighbouring

³²¹ Angola's Preliminary Submission of 12 May 2009, Section 1: Estimated Outer Limits of the Continental Shelf [actual Angola's Submission - by the end 2013], possibly meaning by its reference to "Republic of Congo" (Brazzaville) also its another direct neighbour - Democratic Republic of Congo (Kinshasa) http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/ago2009preliminaryinformation.pdf; Republic of Congo's (Brazzaville) Preliminary Submission of 11 May 2009, paras 5-8 ("without prejudice" clause) and para.11 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cog2009informationpreliminaire.pdf; DR Congo's (Kinshasa) Preliminary Submission of 11 May 2009, Sections 1.a and 4: Dispute over Maritime Delimitation with Angola at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cod2009informationpreliminaire1.pdf and DRC Maritime Areas Delimitation Law No.09/002 of 7 March 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cod2009loi.pdf [reprinted in: *UN Law of the Sea Bulletin* 39-44, including Map (2009 No.70)]; Angola/Republic of Congo (Brazzaville) Offshore Unitization Agreement of 10 September 2001 and Angola/DR Congo (Kinshasa) Joint Hydrocarbons Development Agreement of 30 July 2007 [in force: 23 July 2008], in: *ASIL/IMB Vol.VI* (2011), Reports No. 4-16 (Smith and Dolan), at 4281 and No.4-15 (Smith and Dolan), at 4270 at <http://www.brill.nl/international-maritime-boundaries-2>; Angola Stealing DR Congo's Oil of 25 March 2009 at <http://www.nation.co.ke/News/africa/-/1066/550806/-/13q3ijqz/-/index.html> and Note Verbale of Angola of 31 July 2009 on DR Congo's Preliminary Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/ago_re_cod_2009e.pdf; Angola/DR Congo Negotiations of 25 March 2010 at http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=7260:angola-eyes-extension-to-maritime-border-with-congo&catid=35:Aerospace&Itemid=107; Reply of DR Congo of 14 June 2010 to both Angola's Preliminary Submission of 12 May 2009 and Angola's Note Verbale of 31 July 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cod_ago_re_cod_2010e.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; Illegal Mining in DR Congo of 15 December 2010 at <http://www.voanews.com/english/news/africa/Butty-Zambia-Great-Lakes-Region-Summit-Shikapwasha-15december10-111903174.html>; DR Congo to Lodge Case Before UN Over Oil Dispute with Angola of 19 January 2011 at <http://english.peopledaily.com.cn/90001/90777/90855/7266104.html> & http://www.africanmanager.com/site_eng/detail_article.php?art_id=15774; Angola's Oil of 24 January 2011 at http://www.rigzone.com/news/article.asp?hpf=1&a_id=103406 and Map at http://www.rigzone.com/news/image_detail.asp?img_id=2615&a_id=69902; *ICSID First Quantum v. DR Congo Mining* of 28 April 2011 at <http://www.globalarbitrationreview.com/news/article/29428/tribunal-place-drc-mining-claim/> and 6 January 2012 at <http://www.globalarbitrationreview.com/news/article/30067/first-quantum-settles-congo-claims/>; *supra* note 3.

³²² On rejection by DR Congo's Note Verbale of 14 June 2010 of Angola's 2009 Preliminary Submission due to this Submission not mentioning DR Congo as a coastal state, see *infra* note 327.

coastal states and to any other delimitations, and it noted the Congo's ongoing negotiations on the establishment of the extended limits of the continental shelf with other states concerned.³²³

The Preliminary Submission of Democratic Republic of Congo (DR Congo - Kinshasa) of 11 May 2009 stressed the importance of its Maritime Areas Delimitation Law No.09/002 of 7 March 2009 and noted that outer CS area covered by the Submission was disputed with its neighbour in the north (Angola Cabinda) and to the south - Angola.³²⁴ Angola's Note Verbale of 31 July 2009 rejected DR Congo's Preliminary Submission and its Law No.09/002, which, in Angola's view, were aimed at the unilateral delimitation of all maritime areas, and Angola requested that the rules of international law be followed, including those on equitable maritime boundary delimitation codified in UNCLOS Article 83(1).³²⁵ Whereas Angola was to study DR Congo's Preliminary Submission, so as to make its position on the subject known in due course, Angola's Note Verbale also stressed that Angola remained ready at any time to resolve its dispute with DR Congo "through the relevant machinery provided for in international law".³²⁶

In DR Congo's (Kinshasa) Note Verbale of 14 June 2010, replying to both Angola's Preliminary Submission of 12 May 2009 and Angola's Note Verbale of 31 July 2009 referred to above, DR Congo confirmed the terms of its Maritime Areas Delimitation Law No.09/002 of 7 March 2009, as "affirming its rights and legitimate interests in a spirit of fairness", and its intention to establish the limits of its outer CS beyond 200 miles; DR Congo regretted that Angola's 2009 Preliminary Submission proposed to delimit the Angolan CS without reference

³²³*Id.*, Republic of Congo's (Brazzaville) Preliminary Submission of 11 May 2009, paras 5-8 ("without prejudice" clause) and para.11 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cog2009informationpreliminaire.pdf; Angola/Republic of Congo (Brazzaville) Offshore Unitization Agreement of 10 September 2001, in ASIL/IMB Vol.VI (2011), Report No. 4-16 (Smith and Dolan), at 4281 at <http://www.brill.nl/international-maritime-boundaries-2>.

³²⁴*Id.*, DR Congo's (Kinshasa) Preliminary Submission of 11 May 2009, Sections 1.a and 4: Dispute over Maritime Delimitation with Angola at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cod2009informationpreliminaire1.pdf and DRC Maritime Areas Delimitation Law No.09/002 of 7 March 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cod2009loi.pdf [reprinted in: *UN Law of the Sea Bulletin* 39-44, including Map (2009 No.70)]; Angola/DR Congo (Kinshasa) Joint Hydrocarbons Development Agreement of 30 July 2007 [in force: 23 July 2008], in: ASIL/IMB Vol.VI (2011), Report No.4-15 (Smith and Dolan), at 4270 at <http://www.brill.nl/international-maritime-boundaries-2>; and Angola Stealing DR Congo's Oil of 25 March 2009 at <http://www.nation.co.ke/News/africa/-/1066/550806/-/13q3ijqz/-/index.html>; Illegal Mining in DR Congo of 15 December 2010 at <http://www.voanews.com/english/news/africa/Butty-Zambia-Great-Lakes-Region-Summit-Shikapwasha-15december10-111903174.html>.

³²⁵*Id.*, Angola's Note Verbale of 31 July 2009 on DR Congo's Preliminary Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/ago_re_cod_2009e.pdf.

³²⁶*Id.*, Angola's Note Verbale of 31 July 2009 on DR Congo's Preliminary Submission, para.5 http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/ago_re_cod_2009e.pdf; *infra* note 328.

to the DR Congo as a coastal state and it, therefore, rejected this Angola's Submission.³²⁷ DR Congo's Note Verbale of 14 June 2010 mirrored Angola's Note Verbale quoted above by stating that whereas DRC was to study Angola's Preliminary Submission, so as to make its position on the subject known in due course, DR Congo remained ready at any time to resolve its dispute with Angola "through the relevant mechanism provided for by international law".³²⁸ In January 2011, DR Congo, which produces only 20,000 barrels per day by comparison to Angola's 500,000 barrels per day, was reported to mobilize all means to replace its 2009 Preliminary Submission by its actual Submission to the CLCS and to repossess part of the two oil blocks within the continental shelf being drilled at that time by multinational companies on behalf of Angola.³²⁹

³²⁷*Id.*, Reply of DR Congo of 14 June 2010 to both Angola's Preliminary Submission of 12 May 2009 and Angola's Note Verbale of 31 July 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cod_ago_re_cod_2010e.pdf, reprinted in *UN Law of the Sea Bulletin* 47 (2010 No.73) at www.un.org/Depts/los/; as preceded by Angola/DR Congo Negotiations of 25 March 2010 at http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=7260:angola-eyes-extension-to-maritime-border-with-congo&catid=35:Aerospace&Itemid=107. But see main text at *supra* note 322 that it is not clear whether reference in Angola's Preliminary Submission to "Republic of Congo" means only Congo-Brazzaville or also Angola's another direct neighbour Democratic Republic of Congo (Kinshasa).

³²⁸*Id.*, Reply of DR Congo of 14 June 2010, para.5, to both Angola's Preliminary Submission of 12 May 2009 and Angola's Note Verbale of 31 July 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cod_ago_re_cod_2010e.pdf & http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; *supra* note 326.

³²⁹DR Congo to Lodge Case Before UN Over Oil Dispute with Angola of 19 January 2011 at <http://english.peopledaily.com.cn/90001/90777/90855/7266104.html> & http://www.africanmanager.com/site_eng/detail_article.php?art_id=15774; Angola Oil, *supra* note 321.

Gulf of Guinea and ECOWAS - Gabon, Equatorial Guinea, Cameroon, SaoTome & Principe, Nigeria, Ghana, Cote d'Ivoire, Benin, Togo

Shortly prior to filing its Application for Permission to Intervene in the ICJ *Cameroon v. Nigeria* proceedings on 30 June 1999 referred to below, Equatorial Guinea designated - under UNCLOS Articles 15 and 74 - in its Act of 6 March 1999 the equidistant line as its TS/EEZ maritime boundary (off Bioko Island and the Rio Muni coast) with Nigeria and Cameroon and deposited - under UNCLOS Articles 16 and 75 - the list of geographical coordinates of that boundary with the UN Secretary-General without prejudice to Equatorial Guinea's future delimitations with the neighbouring states.³³⁰

This "without prejudice" clause of the 1999 Act of Equatorial Guinea, which claimed over two-thirds of the oil/fish-rich Corisco Bay, including uninhabited Mbanie, Cocotiers and Congas Islands disputed with Gabon, also applied to the future Equatorial Guinea/Gabon maritime delimitation. Equatorial Guinea's sovereignty over inhabited Corisco, Elobay Grande and Elobay Chico Islands in the Corisco Bay had been undisputed and were covered by the 1974 Gabon/Equatorial Guinea Convention Demarcating the Land and Maritime Frontiers, while Gabon's 1992 Baselines Decree used the disputed Mbanie Islet referred to above as a basepoint and deposited with the United Nations the text of the Decree and geographical coordinates "without prejudice to any bilateral agreements that may be concluded by Gabon".³³¹ The sovereignty dispute over the three islets [Mbanie, Cocotiers and Congas] in the Corisco Bay and the maritime delimitation have been subject to the 2003-2012 United Nations

³³⁰Equatorial Guinea's 1984 Territorial Sea and the EEZ Act No.15 and 1999 Act No.1, in *UN Law of the Sea Bulletin* 19 (1985 No.6) and 31 (1999 No.40), with the 1999 Act expressly providing that the designated boundary is "intended to be without prejudice to any other decision which the Government may take in the future in relation to each of its neighbouring Governments regarding the boundaries of the aforementioned maritime jurisdiction in the areas in question"; Tables of Charts and Geographical Coordinates at www.un.org/Depts/los/; 2002 *Cameroon v. Nigeria; Equatorial Guinea Intervening (Merits)* Judgment, ICJ Reports 2002, 329-30, para.29, at 439-440, para.284 [referring to the 2000 Equatorial Guinea/Nigeria Delimitation Agreement, *UN Law of the Sea Bulletin* 68 (2001 No.45); ASIL/IMB Vol.V (2005), Report No.4-9(2), at 3624-3637 at <http://www.brill.nl/international-maritime-boundaries>], at 442-444, para.291 and Sketch-Map No.11, at 446 paras 298-299, noting that the effect of Bioko Island is an issue between Cameroon/Equatorial Guinea and does not justify shifting of the Court's equidistance, at 449 - Sketch-Map No.12, and at 456, operative para.325.IV.(B), which indicated the boundary's direction without fixing the Cameroon/Nigeria/Equatorial Guinea tripoint.

³³¹1974 Gabon/Equatorial Guinea Convention Demarcating the Land and Maritime Frontiers, 2248 UNTS 93 and Equatorial Guinea's Second and Third Objections of 7 and 26 April 2004, 2261 UNTS 308, 319. See also Gabon's 1992 Baselines Decree, which used Mbanie Islet as a basepoint "without prejudice to any bilateral agreements that may be concluded by Gabon", *UN Law of the Sea Bulletin* 168-169 (2000 No.42); Tables of Charts and Geographical Coordinates at www.un.org/Depts/los/; Daniel J. Dzurek, "Gulf of Guinea Boundary Disputes" (1999) *IBRU Boundary & Security Bulletin* 98-104 at http://www.dur.ac.uk/resources/ibru/publications/full/bsb7-1_dzurek.pdf; V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 266 at <http://www.brill.nl/maritime-political-boundaries-world>.

Equatorial Guinea/Gabon Corisco Bay Territorial and Maritime Mediation which the parties have since 2008 attempted to re-channel into the ICJ.³³²

In parallel to the ongoing 2003-2012 UN *Equatorial Guinea/Gabon Corisco Bay* Mediation, both Equatorial Guinea and Gabon filed on 7 May 2009 their Preliminary Submissions to the CLCS and on 25 February 2011 UN Secretary-General Ban Ki-Moon reported to the UNSC that the two parties had reiterated their commitment to submit their *Corisco Bay* dispute to the ICJ.³³³ Equatorial Guinea's 2009 Preliminary Submission informed the CLCS that its outer CS limits are located offshore of Annobon Island in the vicinity of the

³³²UNSG *Equatorial Guinea/Gabon Corisco Bay* Good Offices of the UN Secretary-General/Judge L. Yves Fortier QC of 23 January 2004 at www.un.org/apps/news/story.asp?NewsID=9499&Cr=gabon&Cr1=guinea; 24 January 2004 at www.afrol.com/printable_article/10841 & www.irinnews.org/report.asp?ReportID=39104&SelectRegion=West_Africa&SelectCountry=EQUATORIAL_GUINEA-GABON; MOU on Joint Oil Development of 6 July at www.irinnews.org/report.aspx?reportid=50522 & www.irinnews.org/report.asp?ReportID=42050&SelectRegion=West_Africa&SelectCountry=EQUATORIAL_GUINEA-GABON & www.un.org/News/Press/docs/2004/sgsm9407.doc.htm; Canadian Oil Site in Gabon of 6 December 2004 at www.irinnews.org/report.asp?ReportID=44540&SelectRegion=West_Africa&SelectCountry=GABON; UNSG Kofi Annan Reopens Talks of 28 February 2006 at www.irinnews.org/Report.aspx?ReportID=58282; UNSG Kofi Annan's Visit to Gabon and Equatorial Guinea on 23-24 March 2006 at www.un.org/apps/news/story.asp?NewsID=17932&Cr=annan&Cr1=travel & www.scoop.co.nz/stories/WO0603/S00457.htm; UNSG Ban Ki-Moon Resumes UN *Equatorial Guinea/Gabon Corisco Bay* Mediation of 11 June 2008 at [www.un.org/apps/news/story.asp?NewsID=26979&Cr=gabon&Cr1,](http://www.un.org/apps/news/story.asp?NewsID=26979&Cr=gabon&Cr1) [www.un.org/News/Press/docs/2008/sgsm11633.doc.htm,](http://www.un.org/News/Press/docs/2008/sgsm11633.doc.htm) [www.un.org/News/Press/docs/2008/sgsm11634.doc.htm,](http://www.un.org/News/Press/docs/2008/sgsm11634.doc.htm) [www.un.org/apps/sg/sgstats.asp?nid=3226,](http://www.un.org/apps/sg/sgstats.asp?nid=3226) www.unmultimedia.org/photo/detail/180/0180512.html & http://www.dur.ac.uk/ibru/news/ibru_news/?itemno=6646; UN *Equatorial Guinea/Gabon Corisco Bay* Will Be ReChannelled Into the ICJ of 22 July 2008 at www.un.org/apps/news/story.asp?NewsID=27446&Cr=Gabon&Cr1 and 17 September 2008 at www.un.org/apps/news/story.asp?NewsID=28087&Cr=gabon&Cr1; Declarations under UNCLOS Article 298(1)(a) of Equatorial Guinea of 21 July 1997, in *UN Law of the Sea Bulletin* 14 (2002 No.49) and Gabon of 23 Jan 2009, in *UN Law of the Sea Bulletin* 13 (2009 No.69) at www.un.org/Depts/los/; Gabon Oil of 18 October 2005 at www.rigzone.com/news/article.asp?a_id=26094; 25 May 2006, *id.* =32497; 8 July 2008 *id.* =63821; 9 January 2009, *id.*, *id.*=71485; 17 August 2010, *id.*, *id.*=97436; 22 March 2011 at http://www.rigzone.com/news/article.asp?a_id=105367; Equatorial Guinea Oil of 15 July 2008 at www.rigzone.com/news/article.asp?a_id=64160 with Map at www.rigzone.com/news/image_detail.asp?img_id=3993&a_id=64160; 13 February 2009 at www.rigzone.com/news/article.asp?a_id=72914 and Oil News/Maps at http://www.rigzone.com/news/region.asp?r_id=3 & www.rigzone.com/news/image_results.asp?ctry_id=73.

³³³*Equatorial Guinea/Gabon Corisco Bay Territorial and Maritime* Mediation of 25 February 2011 at [http://www.un.org/apps/news/story.asp?NewsID=37629&Cr=dispute&Cr1,](http://www.un.org/apps/news/story.asp?NewsID=37629&Cr=dispute&Cr1) <http://allafrica.com/stories/201102260004.html> & http://www.menasborders.com/menasborders/news/article/1529/Ban_meets_Gabon_Equatorial_Guinea_leaders_on_border_dispute/ & <http://www.afriquejet.com/news/africa-news/ban-meets-gabon,-equatorial-guinea-leaders-on-border-dispute-201102263061.html> & <http://english.peopledaily.com.cn/90001/90777/90856/7301013.html> and UNSG Ban Ki-Moon's Remarks to the UNSC on Peace and Security in Africa of 25 February 2011 http://www.un.org/apps/news/infocus/sgspeeches/search_full.asp?statID=1095.

Ascension Fracture Zone and both Equatorial Guinea's and Gabon's Preliminary Submissions declared that in accordance with UNCLOS Article 76(10) and Article 9 of Annex II quoted before, these Preliminary Submissions were without prejudice to any outstanding maritime delimitations.³³⁴ Gabon [planning to file the actual Submission by the end of 2011] also clearly committed itself to "consult with and endeavour to reach agreement with neighbouring States with regard to the establishment of appropriate outer CS limits beyond 200 miles".³³⁵ The 2009 Preliminary Submission of Angola [planning to file its actual Submission by the end of 2013] stated that as was noted before, in view of undelimited Angola/Gabon boundary, the CLCS Recommendations on Submission of Angola [planning to file its actual Submission by the end of 2013] will be without prejudice to Angola's future maritime delimitations with Gabon and other states.³³⁶

One of the parties to the UN *Corisco Bay* dispute referred to above, i.e., Equatorial Guinea has also been involved as a non-party in one of the longest and procedurally and substantially most complex land and maritime disputes, namely in the ICJ *Cameroon v. Nigeria; Equatorial Guinea Intervening Land and Maritime Boundary* case, which involved phases of Provisional Measures, Preliminary Objections, Interpretation, Counter-Claims,

³³⁴Equatorial Guinea's Preliminary Submission of 7 May 2009, paras 4-5 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/gnq2009preliminaryinformation.pdf and Gabon's Preliminary Submission of 7 May 2009 [to be replaced by actual Submission by the end of 2011], paras 5-6, 9, 14 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/gab2009preliminaryinformation.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* notes 3, 332.

³³⁵*Id.*, Gabon's Preliminary Submission of 7 May 2009 [to be replaced by actual Submission by the end of 2011], para. 14 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/gab2009preliminaryinformation.pdf.

³³⁶Angola's Preliminary Submission of 12 May 2009 [planning to file its actual Submission by the end of 2013], Section 1: Estimated Outer Limits of the Continental Shelf, at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/ago2009preliminaryinformation.pdf, quoted *supra* note 321.

Intervention and Merits.³³⁷ They were followed by additional decade of implementation of the 2002 *Cameroon v. Nigeria; Equatorial Guinea Intervening Land and Maritime Boundary*

³³⁷*Cameroon v. Nigeria Land and Maritime Boundary (Request for the Indication of Provisional Measures)* Order, ICJ Reports 1996, 13, President M. Bedjaoui and Vice-President S.M. Schwebel concurring; *Cameroon v. Nigeria (Preliminary Objections)* Judgment, ICJ Reports 1998, 275, President S.M. Schwebel concurring; *Nigeria v. Cameroon Land and Maritime Boundary (Request for Interpretation of the Cameroon v. Nigeria Judgment of 11 June 1998)* Judgment, President S.M. Schwebel concurring, ICJ Reports 1999, 31; *Cameroon v. Nigeria (Counter-Claims)* Orders, Presidents S.M. Schwebel and G. Guillaume concurring, ICJ Reports 1999, 983 and 2001, 9; *Cameroon v. Nigeria (Application of Equatorial Guinea for Permission to Intervene)* Order [unanimous], President S.M. Schwebel, ICJ Reports 1999, 1029 [*Indonesia/Malaysia (Intervention)*] Judgment, President G. Guillaume, ICJ Reports 2001, 588-589, 596, 606 paras 35, 48, 88]; *Cameroon v. Nigeria; Equatorial Guinea Intervening (Merits)* Judgment, ICJ Reports 2002, 303, President G. Guillaume concurring at www.icj-cij.org; and ASIL/IMB Vol.V (2005), Report No.4-1 Add.2 (T.Daniel), at 3605 at <http://www.brill.nl/international-maritime-boundaries>; Kwiatkowska, *Decisions of the World Court* (2010), *supra* note 1, at 86-90 at www.uu.nl/nilos/books and Kwiatkowska, "The Law of the Sea Related Cases in the ICJ During the Presidency of Judge Stephen M. Schwebel (1997-2000) and Beyond" (2002 Vol.I) 2 *The Global Community Yearbook of International Law and Jurisprudence* 27, 32-34 at <http://ukcatalogue.oup.com/product/9780379214758.do> & <http://www.oup.com/us/catalog/general/series/GlobalCommunityYearbookofInterna/?view=usa>, updated and revised as of 10 March 2010, Section 6: Equitable Maritime Delimitation and Territorial Questions at NILOS Online Papers www.uu.nl/nilos/onlinepapers, *supra* note 13.

(Merits) Judgment within the UN *Cameroon/Nigeria* Mixed Commission, to be possibly completed in 2012.³³⁸

Between the 2006 *Cameroon/Nigeria* Agreement on Nigeria's Withdrawal from Bakassi Peninsula and Other Measures Implementing the ICJ Judgment and the 2011 *Cameroon/Nigeria* Framework Agreement on Cross-Border Cooperation for the Exploitation of

³³⁸See esp. Fifth UN Summit held with UNSG Kofi Annan <www.un.org/sg/> in New York and *Cameroon/Nigeria* Agreement on Nigeria's Withdrawal from Bakassi Peninsula and Other Measures Completing Implementation of the 2002 ICJ *Cameroon v. Nigeria; Equatorial Guinea Intervening Land and Maritime Boundary (Merits)* Judgment [*supra*] of 12 June 2006 at www.un.org/apps/news/story.asp?NewsID=18825&Cr=cameroon&Cr1=nigeria and the Agreement's text at www.cameroon-info.net/cmi_show_news.php?id=17737, UNSG Kofi Annan's Statement at www.un.org/News/Press/docs/2006/afr1397.doc.htm, www.un.org/News/Press/docs/2006/sgsm10511.doc.htm & www.un.org/apps/sg/sgstats.asp?nid=2083 and his Press Conference at www.un.org/apps/sg/offthecuff.asp?nid=884, *Cameroon/Nigeria* Joint Communique of 12 June 2006 at www.un.org/News/Press/docs/2006/sg2113.doc.htm and British FCO Minister Lord Triesman's Statement at www.gnn.gov.uk/Content/Detail.asp?ReleaseID=207343&NewsAreaID=2; Nigeria Hands Cameroon Formal Control of Bakassi Peninsula of 14 August 2006 at www.un.org/apps/news/story.asp?NewsID=19509&Cr=cameroon&Cr1=nigeria & <http://news.bbc.co.uk/2/hi/africa/4789647.stm>; 15th Meeting of UN Mixed Commission - 6-7 September 2006; UNSG Letter to the UNSC President, UN Doc.S/2006/778 and UNSG Kofi Annan Hails Steady *Cameroon/Nigeria* Demarcation Progress of 6 October 2006 at www.un.org/apps/news/story.asp?NewsID=20163&Cr=Nigeria&Cr1=Cameroon; 16th Meeting - 6-7 November 2006; 17th Meeting - 25-26 January 2007; 18th Meeting - 5-6 April; 5th Special Meeting - 10-11 May 2007, which completed maritime delimitation by finalizing the conversion of the British Admiralty Chart 3433 (1994 Edition) into WGS84 Datum and adopting the Map together with the corresponding geographical coordinates; 19th Meeting - 5-6 July 2007 Completing Implementation of the 2002 ICJ Judgment; 20th Meeting - 16 November 2007; 21st Meeting - 13 March 2008; 22nd Meeting - 20 June 2008; UNSG Ban Ki-Moon: Nigeria-Cameroon Peninsula Transfer of 14 August 2008 at www.un.org/apps/news/story.asp?NewsID=27706&Cr=cameroon&Cr1=bakassi, www.un.org/News/Press/docs/2008/sgsm11745.doc.htm, <http://news.bbc.co.uk/2/hi/africa/7559895.stm> & www.voanews.com/english/2008-08-14-voa19.cfm; End of *Cameroon/Nigeria* Dispute by 2011 of 10 January 2010 at <http://www1.voanews.com/english/news/africa/central/cameroon-nigeria-boundary-demarcation-voa-81094267.html> and <http://www.un.org/apps/news/story.asp?NewsID=36984&Cr=nigeria&Cr1>; 26th Meeting of UN Mixed Commission - 23-24 September 2010 at <http://unowa.unmissions.org/Default.aspx?tabid=765&ctl=Details&mid=1796&ItemID=1871>; *Cameroon/Nigeria* Framework Agreement on Cross-Border Cooperation for the Exploitation of Hydrocarbon Resources of 11 March 2011 at http://www.menasborders.com/menasborders/news/article/1584/Cameroon_and_Nigeria_agree_on_joint_oil_exploration_in_Bakassi_region/ & <http://allafrica.com/stories/201103140245.html>; UN *Cameroon/Nigeria* Mixed Commission Will Complete Its Work in 2012 of 22 November 2011 at <http://www.un.org/apps/news/story.asp?NewsID=40486&Cr=cameroon&Cr1>, <http://www.un.org/apps/sg/sgstats.asp?nid=5703>, <http://www.un.org/News/Press/docs/2011/sgsm13962.doc.htm>, <http://www.un.org/News/Press/docs/2011/sgsm13963.doc.htm> & <http://www.un.org/News/Press/docs/2011/afr2293.doc.htm>. For Communiqués of all Summits and Meetings, see UNOWA at <http://unowa.unmissions.org/Default.aspx?tabid=804>; 98 AJIL 449-452 (2004); Map www.sovereigngeographic.com; News at <http://allafrica.com/cameroon>.

Hydrocarbon Resources,³³⁹ Cameroon filed with the CLCS its Preliminary Submission and Nigeria its Submission on the same date of 7 May 2009. Cameroon's Preliminary Submission referred to Nigeria, Benin, Togo and Ghana, as well as Equatorial Guinea, Gabon and Sao Tome & Principe as also bordering the Gulf of Guinea, and to the necessity of taking account of implementation of the 2002 ICJ *Cameroon v. Nigeria; Equatorial Guinea Intervening Land and Maritime Boundary (Merits)* Judgment referred to above.³⁴⁰ In its Note Verbale of 22 December 2009, Equatorial Guinea stated that Cameroon's 2009 Preliminary Submission had no basis in law or in fact, that Cameroon/Equatorial Guinea boundary is an equidistance which Cameroon attempted to unilaterally extend, and that Equatorial Guinea has Agreements with Sao Tome & Principe (1999)³⁴¹ and Nigeria (2000)³⁴² determining the outer CS limits of Equatorial Guinea where it adjoins the limits of those states, which in the view of Equatorial Guinea were disregarded in Cameroon's Preliminary Submission; Equatorial Guinea has not given, nor did it intend to give, its consent for the CLCS to consider Cameroon's 2009 Preliminary or any subsequent Submission involving a claim on the continental shelf beyond the Cameroon/Equatorial Guinea equidistance line.³⁴³

The 1999 Equatorial Guinea/Sao Tome & Principe Maritime Boundary Delimitation Treaty referred to in Equatorial Guinea's 2009 Note Verbale quoted above is also listed in Sao Tome & Principe's Preliminary Submission of 13 May 2009, along with the 2001

³³⁹*Id.*

³⁴⁰Cameroon's Preliminary Submission of 7 May 2009, Section III: Delimitations in the Gulf of Guinea at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cmr2009informationpreliminaire.pdf and Equatorial Guinea's Note Verbale of 22 December 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/gnq_re_cmr2009en.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3.

³⁴¹On Equatorial Guinea/Sao Tome & Principe Maritime Boundary Delimitation Treaty of 26 June 1999 [*UN Law of the Sea Bulletin* 39 (2001 No.47)], see *Cameroon v. Nigeria; Equatorial Guinea Intervening (Merits)* Hearings, CR 2002/13, 26, 28 [Crawford, 7 March 2002] at www.icj-cij.org; ASIL/IMB (1993), Report No.4-8 (D.A. Colson) at <http://www.brill.nl/international-maritime-boundaries-3>.

³⁴²On Nigeria/Equatorial Guinea Maritime Boundary Treaty of 23 September 2000 [in force: 3 April 2002, 2205 UNTS 325; *UN Law of the Sea Bulletin* 68 (2001 No.45)] and Protocol of 3 April 2002 [in force: 29 June 2002], see *Cameroon v. Nigeria; Equatorial Guinea Intervening (Merits)* Judgment, ICJ Reports 2002, 423, 440, paras 243, 284, Separate Opinion of Judge *ad Hoc* Mbaye, para.136; Hearings, CR 2002/6, 58-60, 62, 64-65 [Deputy Agent Pellet, 25 February 2002], CR 2002/13, 26-28, 63-65 [Counsel Crawford, 7 March], CR 2002/20, 53 [15 March], CR 2002/21, 32-33 [Counsel Colson, 18 March], CR 2002/22, 33 [Counsel Cot, 19 March], CR 2002/23, 27-30, 33 [Crawford], CR 2002/26, 20-21 [21 March 2002]; ASIL/IMB (1993), Report Nos 4-9, 4-9 Add.1 & 4-9(2) (D.A. Colson) at <http://www.brill.nl/international-maritime-boundaries-3>.

³⁴³Equatorial Guinea's Note Verbale of 22 December 2009, para.5, on Cameroon's Preliminary Submission quoted *supra* at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/gnq_re_cmr2009en.pdf.

Nigeria/Sao Tome & Principe Joint Development Zone Treaty³⁴⁴ and the 2001 Gabon/Sao Tome & Principe Maritime Delimitation Agreement.³⁴⁵ Sao Tome & Principe's 2009 Preliminary Submission regarded - as most Submissions did - possible unresolved delimitations as "maritime disputes" by reference to Rule 46 and Annex I of the CLCS Rules of Procedure and expressed its readiness to enter into consultations with its neighbouring states with a view to reach Agreements which would allow the CLCS to make Recommendations on all the relevant Submissions without prejudice to the future maritime delimitations.³⁴⁶

Cameroon's partner from the celebrated 2002 ICJ *Cameroon v. Nigeria; Equatorial Guinea Intervening Land and Maritime Boundary (Merits)* Judgment referred to above, i.e., Nigeria stressed in its 2009 Submission that its outer CS limits in the western portion of the Gulf of Guinea are to be considered by the CLCS without prejudice to any potential boundary delimitations with any other states in the future.³⁴⁷ In its Note Verbale of 28 July 2009 on

³⁴⁴On Nigeria/Sao Tome & Principe Joint Development Zone Treaty of 21 February 2001 [in force: 16 January 2003, *UN Law of the Sea Bulletin* 42 (2003 No.50); ASIL/IMB Vol.V (2005), Report No.4-10 (T. Daniel) at 3638 at <http://www.brill.nl/international-maritime-boundaries>; www.nigeriasaotomejda.com/], see *Cameroon v. Nigeria; Equatorial Guinea Intervening (Merits)* Hearings, CR 2002/6, 58-62 [Deputy Agent Pellet, 25 February 2002], CR 2002/13, 28-29 [Counsel Crawford, 7 March], CR 2002/20, 55 [15 March], CR 2002/22, 33-34 [Counsel Cot, 19 March 2002], CR 2002/23, 30-33 [Crawford] at www.icj-cij.org; 21 May and 18 June 2003 at www.gulf-news.com/Articles/news.asp?ArticleID=88242 and www.rigzone.com/news/article.asp?a_id=7049, 28 October 2003 at <http://news.bbc.co.uk/2/hi/africa/3219409.stm>; 16 December 2004 at www.rigzone.com/news/article.asp?a_id=18809; 15 March 2006 at www.rigzone.com/news/article.asp?a_id=30307; 14/16 July 2008 at www.guardian.co.uk/business/2008/jul/14/oil.internationalaidanddevelopment & www.rigzone.com/news/article.asp?a_id=64261; 25/28 November 2008 at www.rigzone.com/article.asp?a_id=70007 & www.globalarbitrationreview.com/news/article/4953/energy-company-claims-against-west-african-states; 15 January 2009 at www.rigzone.com/news/article.asp?a_id=71740; 11 November 2010 at <http://www.globalarbitrationreview.com/journal/article/28859/arbitrating-nigeria/>; and Maps at http://www.rigzone.com/news/image_detail.asp?img_id=3119&a_id=71740 & http://www.rigzone.com/news/image_results.asp?ctry_id=180.

³⁴⁵Preliminary Submission of Sao Tome & Principe of 13 May 2009, Section 6: Maritime Delimitations and Other Issues at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/stp2009_preliminary%20info.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; *supra* note 3.

³⁴⁶*Id.*

³⁴⁷Nigeria's Submission of 7 May 2009, Section 4: Absence of Disputes, and Ghana's Note Verbale Pursuant to ECOWAS Understanding of 28 July 2009 on Nigeria's Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_nga_38_2009.htm, http://www.un.org/Depts/los/clcs_new/submissions_files/nga38_09/clcs_38_2009_los_gha.pdf, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; the 2000 Nigeria/Equatorial Guinea Maritime Boundary Treaty and the 2001 Nigeria/Sao Tome & Principe Joint Development Zone Treaty, *supra* notes 342 & 344; Nigeria Oil at http://www.rigzone.com/news/image_results.asp?ctry_id=152; and *supra* note 3.

Nigeria's Submission, Ghana stated that it had no objection to Nigeria's Submission which will be without prejudice to a final Ghana/Nigeria boundary delimitation and that:

Furthermore, the present "no objection" notification by Ghana to the Submission of Nigeria is being communicated on the basis of the understanding reached at a meeting held in Accra (Ghana) from 24 to 26 February 2009, under the auspices of the Economic Community of West African States (ECOWAS) Commission, of representatives of Benin, Cote d'Ivoire, Ghana, Nigeria and Togo, which reached a common Understanding that "issues of the limit of adjacent/opposite boundaries shall continue to be discussed in a spirit of cooperation to arrive at a definite delimitation even after the presentation of the preliminary information/submission. ECOWAS Member States would, therefore, write "no objection" Note to the Submission of their neighbours.³⁴⁸

The same "no objection" notification based on the ECOWAS Understanding was included in a Nigeria's Note Verbale of 22 June 2009 on the Submission of Ghana [located between Togo and Cote d'Ivoire and not having any delimitation Agreements yet with any of its neighbouring states] of 28 April 2009, which expressly stated that it was filed by Ghana

³⁴⁸*Id.*, Ghana's Note Verbale Pursuant to the ECOWAS Understanding of 28 July 2009 on Nigeria's Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_nga_38_2009.htm, http://www.un.org/Depts/los/clcs_new/submissions_files/nga38_09/clcs_38_2009_los_gha.pdf. See also ECOWAS' Contribution to Fighting Piracy and Maritime Armed Robbery in the Gulf of Guinea of 30 August 2011 at <http://www.un.org/News/Press/docs/2011/sc10372.doc.htm>; UNSC Resolution 2018 Welcomes Anti-Piracy Strategy in the Gulf of Guinea of 31 October 2011 at <http://www.un.org/apps/news/story.asp?NewsID=40261&Cr=piracy&Cr1> & <http://www.un.org/News/Press/docs/2011/sc10430.doc.htm>; ECOWAS and Counter-Terrorism of 15-16 February 2012 at <http://www.voanews.com/english/news/africa/ECOWAS-Meets-on-West-Africa-Issues-139371953.html> & <http://www.voanews.com/english/news/africa/west/ECOWAS-Tackles-Piracy-Elections-Food-Crisis-139443813.html>.

without prejudice to the future delimitations with Togo, Benin, Nigeria and Cote d'Ivoire.³⁴⁹ Ghana has one point (Point OL-GHA-8) where the outer CS joins to the Ghana/Cote d'Ivoire equidistance,³⁵⁰ and Ghana filed the same Note Verbale as it did to Nigeria's Submission quoted above also - with the same date of 28 July 2009 - on Submission of Cote d'Ivoire [located between Liberia and Ghana and not having any delimitation Agreements yet with any of its neighbouring states] of 8 May 2009, which expressly stated that it was filed by Cote d'Ivoire without prejudice to the future delimitations with other ECOWAS members - Ghana, Togo, Benin and Nigeria.³⁵¹

Whereas Submissions of Nigeria, Ghana and Ivory Coast [and Notes Verbales pertaining to these Submissions] were - as was discussed above - part of the ECOWAS Understanding on "no objection" notification and were thus all filed without prejudice to future maritime delimitations of these West African States, including Benin and Togo, the

³⁴⁹Ghana's Submission of 28 April 2009, Section 4: Existing and Outstanding Maritime Boundaries, Section 5: Absence of Disputes [referring to the ECOWAS Understanding], and Nigeria's Note Verbale Pursuant to the ECOWAS Understanding of 22 June 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_gha_26_2009.htm, http://www.un.org/Depts/los/clcs_new/submissions_files/gha26_09/nga_re_gha.2009pdf.pdf, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; Ghana/Cote d'Ivoire Boundary, *U.S. Limits of the Sea* No.138 of 16 July 1973 at <http://www.law.fsu.edu/library/collection/LimitsinSeas/IBS138.pdf>; Ghana/Cote d'Ivoire Map of 9 October 2007 at http://www.rigzone.com/news/image_detail.asp?img_id=4648&a_id=90091; Ghana, Cote d'Ivoire, Liberia and Sierra Leone Oil of 19 October 2009 at http://www.rigzone.com/news/article.asp?a_id=81525 & http://www.rigzone.com/news/image_detail.asp?img_id=6323&a_id=81525; Ghana's Fight over Oil of 17-26 March 2010 at <http://www.washingtontimes.com/news/2010/mar/26/ghana-discovery-sparks-fight-over-oil/>, <http://www.resourceinvestor.com/News/2010/3/Pages/Fate-of-foreign-oil-investors-in-limbo-amid-GhanaCote-dIvoire-border-dispute.aspx> & <http://www.ghanabusinessnews.com/2010/03/17/ghana-ivory-coast-meet-over-offshore-boundary/>; Ghana's First Commercial Oil of 15 December 2010 at <http://www.bbc.co.uk/news/world-africa-11996983> & <http://www.voanews.com/english/news/africa/Ghana-Begins-Commercial-Oil-Production-Wednesday--111891959.html>; Ghana/Norway Oil for Development Agreement of 12 April 2011, assisting Ghana in oil development near the border with Cote d'Ivoire at <http://www.norwaypost.no/general-business/royal-visit-to-ghana-25046-25046-25046.html>; Ghana Oil Experience Shows the Way to Sierra Leone, Liberia and Guineas of 21 April 2011 at <http://www.voanews.com/english/news/africa/Warning-Signs-Gather-Over-Ghanas-Oil-Fields-120426944.html>; *supra* note 3.

³⁵⁰*Id.*, Ghana's Submission of 28 April 2009, Point OL-GHA-8 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_gha_26_2009.htm; Ghana/Cote d'Ivoire Boundary, *U.S. Limits of the Sea* No.138 of 16 July 1973 at <http://www.law.fsu.edu/library/collection/LimitsinSeas/IBS138.pdf>; latest Ghana/Cote d'Ivoire boundary related events, *supra*.

³⁵¹Cote d'Ivoire's Submission of 8 May 2009, Section 4: Existing and Outstanding Maritime Boundaries, Section 5: Absence of Disputes [referring to the ECOWAS Understanding, *supra* note 347], and Ghana's Note Verbale Pursuant to the ECOWAS Understanding of 28 July 2009 on Cote d'Ivoire's Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_civ_42_2009.htm, http://www.un.org/Depts/los/clcs_new/submissions_files/cvi42_09/clcs_42_2009_lo_gha.pdf, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; Ghana, Cote d'Ivoire, Liberia and Sierra Leone Oil of 19 October 2009 at http://www.rigzone.com/news/article.asp?a_id=81525 & http://www.rigzone.com/news/image_detail.asp?img_id=6323&a_id=81525; *supra* notes 3 and 349-350.

latter two ECOWAS members also filed themselves: Benin/Togo's Updated Joint Preliminary Submission of 9 May 2009, Togo's Preliminary Submission of 8 May 2009 and Benin's Updated Preliminary Submission of 12 May 2009.³⁵² Benin/Togo's Updated Joint Preliminary Submission explained that there existed their maritime delimitation disputes with Ghana and Nigeria, with whom Benin and Togo have carried out negotiations with a view to enabling the CLCS to issue Recommendations on Submissions of these four ECOWAS states without prejudice to their future delimitations. Togo's Preliminary Submission confirmed its carrying out of such negotiations with Benin and Ghana, and Benin's Updated Preliminary Submission noted its negotiations to the same effect with Togo, Nigeria (with whom Benin concluded Maritime Delimitation Treaty of 4 August 2006), Ghana and Cote d'Ivoire.³⁵³

West and North Africa

Cape Verde, Mauritania, Morocco, Gambia, Senegal, Guinea-Bissau, Guinea, Sierra Leone, Liberia

The Preliminary Submission of Cape Verde of 7 May 2009 noted Cape Verde/Senegal and Cape Verde/Mauritania Treaties on Delimitation of the Maritime Frontier of 17 February 1993 and 19 September 2003 respectively, and the lack of such a treaty between Cape Verde/Gambia; there may exist - according to Cape Verde's Submission - a potential overlap of the outer CS areas with these three states, with whom Cape Verde was ready to enter into consultations, so as to allow the CLCS to make Recommendations on the Submissions of all

³⁵²Benin/Togo's Updated Joint Preliminary Submission of 9 May 2009, Section 6: Delimitation of Maritime Boundaries and Other Matters at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/ben_tgo2009preliminaryinfo_updated.pdf; Togo's Preliminary Submission of 8 May 2009, Section 6: Delimitation of Maritime Boundaries and Other Matters at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/tgo_2009_preliminaryinfo.pdf; Benin's Updated Preliminary Submission of 12 May 2009, Section 5: Delimitation of Maritime Boundaries and Other Matters at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/ben_2009preliminaryinformation_update.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; Benin/Nigeria Maritime Delimitation Treaty of 4 August 2006, in: ASIL IMB Vol.VI (2011), Report No.4-14 (Daniel), at 4256 at <http://www.brill.nl/international-maritime-boundaries-2>; *supra* note 3. See also *Benin/Niger Frontier Dispute (Formation of Chamber)* Orders, ICJ Reports 2002, 613, 2003, 155; ICJ Trust Fund's Grant of 4 June 2004 at www.un.org/News/Press/docs/2004/sg2087.doc.htm & www.unwire.org/UNWire/20040607/449_24601.asp, *Benin/Niger (Composition of Chamber)* Order and (*Merits*) Judgment, ICJ Reports 2005, 84, 90 and *Niger Takes Over Disputed Lete Island of 15 February 2007* at <http://news.bbc.co.uk/2/hi/africa/6364703.stm>; *ICSID Togo v. French GDF Suez (Annulment)* of 10 November 2010 at <http://www.globalarbitrationreview.com/news/article/28952/icsid-award-challenge-ready-togo>.

³⁵³*Id.*

four of the states (Cape Verde, Mauritania, Gambia, Senegal) without prejudice to their future maritime delimitations.³⁵⁴

Mauritania's Preliminary Submission of 7 May 2009 expressly confirmed that it was filed without prejudice to such potential outer CS overlap between Cape Verde/Mauritania and other neighbouring states.³⁵⁵ The Note Verbale of 26 May 2009 of Morocco - the CLCS deadline of which is only in May 2017 and which has been involved in the protracted dispute

³⁵⁴Cape Verde's Preliminary Submission of 7 May 2009, Section 6: Maritime Delimitations and Other Issues at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/cpv_2009_preliminary_information.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; Cape Verde/Senegal Treaty on Delimitation of the Maritime Frontier of 17 February 1993 [in force: 1 October 1993]; Cape Verde/Mauritania Treaty on Delimitation of the Maritime Frontier of 19 September 2003, in: ASIL/IMB Vol.V (2005), Report No.4-12 at 3694-3707 at <http://www.brill.nl/international-maritime-boundaries>; Cape Verde/Mauritania May Enter Into Joint Development Zone (Cabo Verde y Mauritania revisarán delimitación de aguas territoriales), WebIslam.com of 18 May 2006; Portugal Assists Preparation of Submission by Its Former Colony Cape Verde of 6 February 2008 at <http://www.macaub.com.mo/en/2008/02/06/4512/>; Cape Verde Joins ICSID of 7 January 2011 at <http://www.globalarbitrationreview.com/news/article/29009/cape-verde-joins-icsid/>; Norway's Strengthened CLCS Assistance to Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone of 22 September 2011 at <http://www.norwaypost.no/news/norway-strengthens-agreement-with-african-nations-25738.html>; *supra* note 3.

³⁵⁵Preliminary Submission of Mauritania of 7 May 2009, Section 6: Delimitation of Maritime Boundaries and Other Matters and Morocco's Note Verbale of 26 May 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/mrt2009informationpreliminaire.pdf & http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/mar_re_mrt2009.pdf & http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; Morocco/Mauritania Maritime Boundary Agreement of 14 April 1976 [in force: 10 November 1976], in *Gulf of Maine* Canada's Reply, Annexes, Vol.I-No.52; ASIL/IMB Vol.II (1993), Report No.4-6 (Adede) at <http://www.brill.nl/international-maritime-boundaries-3>; Cape Verde/Mauritania Treaty on Delimitation of the Maritime Frontier of 19 September 2003, in: ASIL/IMB Vol.V (2005), Report No.4-12 at 3694-3707 at <http://www.brill.nl/international-maritime-boundaries>; China/Mauritania Fishing Agreement of 8 July 2011 at <http://www.voanews.com/english/news/asia/east-pacific/Greenpeace-Opposes-Chinese-Fishing-Deal-in-Mauritania--125207604.html>; Norway's Strengthened CLCS Assistance to Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone of 22 September 2011 at <http://www.norwaypost.no/news/norway-strengthens-agreement-with-african-nations-25738.html>; *supra* note 3.

over Western Sahara³⁵⁶ - rejected (as did all 3 Notes Verbales of Morocco of 16 May 2009 on Portugal's and Spain's Submissions discussed further below) any action intended to unilaterally establish the outer CS and it reaffirmed Morocco's commitment to the equitable boundary delimitation as codified in UNCLOS Article 83.³⁵⁷

The lack of Gambia/Cape Verde delimitation treaty was apart from Cape Verde's Preliminary Submission quoted above, noted in Gambia's Preliminary Submission of 4 May 2009, which, moreover, reprinted the Gambia/Senegal Maritime Delimitation Treaty of 4 June 1975 and which declared that Gambia's Preliminary Submission was without prejudice to the future outer CS delimitations between Gambia/Cape Verde and Gambia/Senegal.³⁵⁸

³⁵⁶Western Sahara Advisory Opinion, ICJ Reports 1975, 3 and its follow-up, in Kwiatkowska, *Decisions of the World Court* (2010), *supra* note 1, at 75-77 at <http://www.brill.nl/decisions-world-court-relevant-un-convention-law-sea> & <http://www.uu.nl/nilos/books>; and the latest UN Western Sahara related developments, including: UNSC Resolution 1920 of 30 April 2010 and S/2010/175 at www.un.org/apps/news/story.asp?NewsID=345548&Cr=western+sahara&Cr1 & www.un.org/News/Press/docs/2010/sc9917.doc.htm; UN Western Sahara Talks of 9-10 November 2010 at <http://www.un.org/apps/news/story.asp?NewsID=36713&Cr=western+sahara&Cr1> & <http://www.voanews.com/english/news/africa/north/UN-Security-Council-Deplores-Western-Sahara-Violence-108552214.html>; 23 January 2011 at <http://www.un.org/apps/news/story.asp?NewsID=37355&Cr=Western%20Sahara&Cr1>; 9 March 2011 at <http://www.un.org/apps/news/story.asp?NewsID=37724&Cr=western+sahara&Cr1> & <http://allafrica.com/stories/201103180838.html>; USA Supports Morocco's Plan for Autonomy of Disputed Western Sahara of 24 March 2011 at <http://www.middle-east-online.com/english/?id=45111> & <http://www.voanews.com/english/news/africa/Moroccan-Kings-Speech-Long-on-Reform-Promises-Short-on-Details-118661989.html>; UN Western Sahara Deadlock and UNSG Report S/2011/249 of 19 April 2011 at <http://www.un.org/Docs/journal/asp/ws.asp?m=s/2011/249> & <http://www.un.org/apps/news/story.asp?NewsID=38148&Cr=western+sahara&Cr1>; UNSC Resolution 1979 of 27 April 2011 at <http://www.un.org/News/Press/docs/2011/sc10234.doc.htm> and UN Talks of 7 June 2011 at <http://www.un.org/apps/news/story.asp?NewsID=38650&Cr=western+sahara&Cr1>; The Question of Western Sahara of 4 October 2011 at <http://www.un.org/News/Press/docs/2011/gaspd479.doc.htm> & <http://www.un.org/News/Press/docs/2011/gaspd479Corr1.doc.htm>; UN Western Sahara at <http://www.arso.org/06-0.htm>, <http://www.icj-cij.org/docket/index.php?p1=3&p2=4> & http://en.wikipedia.org/wiki/Western_Sahara.

³⁵⁷Morocco's Note Verbale of 26 May 2009 on Mauritania's Preliminary Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/mar_re_mrt2009.pdf, quoted *supra*. On Notes Verbales of Morocco of 16 May 2009 on Portugal's and Spain's Submissions, see next section in this article below, where also Morocco/Spain dispute over tiny rocky Perejil (Parsley)/Leila (Toura) Islet and Morocco/Spain (Africa/Europe) Fixed Link are noted.

³⁵⁸Gambia's Preliminary Submission of 4 May 2009, Section 6: Maritime Delimitations and Other Issues, reprinting Gambia/Senegal Maritime Delimitation Treaty of 4 June 1975 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/gmb_2009_preliminaryinfo.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; and 1975 Gambia/Senegal Treaty also, in: ASIL/IMB Vol.I (1993), Report No.4-2, at 849 at <http://www.brill.nl/international-maritime-boundaries-3> and *U.S. Limits in the Seas* No.85 of 23 March 1979 at <http://www.state.gov/documents/organization/58837.pdf>; Norway's Strengthened CLCS Assistance to Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone of 22 September 2011 at <http://www.norwaypost.no/news/norway-strengthens-agreement-with-african-nations-25738.html>; *supra* note 3.

The Preliminary Submission of Senegal [located between Gambia and Guinea-Bissau] of 12 May 2009 was, on its part, filed without prejudice to Gambia/Senegal, Cape Verde/Senegal and Guinea-Bissau/Senegal overlapping claims and delimitations, including the 1975 Gambia/Senegal Maritime Delimitation Treaty and the 1993 Cape Verde/Senegal Treaty on Delimitation of the Maritime Frontier referred to above, as well as the 1989 *Guinea-Bissau/Senegal Maritime Boundary Award* and the ensuing treaties.³⁵⁹ While the 1991 ICJ *Guinea-Bissau v. Senegal Arbitral Award of 31 July 1989* Judgment concerned the procedural question of the validity of the 1989 *Guinea-Bissau/Senegal Award* (which the 1991 ICJ Judgment upheld), this 1991 ICJ *Guinea-Bissau v. Senegal* Judgment is of direct relevance to future delimitation in that it reaffirmed the Award's findings on the validity of the 1960 Franco/Portuguese Agreement with respect to the delimitation of the territorial seas, contiguous zone and the continental shelves between the parties; the subsequent ICJ *Guinea-Bissau v. Senegal Maritime Delimitation* case was discontinued upon conclusion by the parties of their 1993 Dakar Joint Management and Cooperation Agreement and its 1995 Protocol.³⁶⁰

³⁵⁹Senegal's Preliminary Submission of 12 May 2009, Section 6: Delimitation of Maritime Boundaries and Other Matters at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/sen2009informationpreliminaire.pdf; http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; Gambia/Senegal Maritime Delimitation Treaty of 4 June 1975 [in force: 27 August 1976], ASIL/IMB Vol.I (1993), Report No.4-2, at 849 at <http://www.brill.nl/international-maritime-boundaries-3> and *U.S. Limits in the Seas* No.85 of 23 March 1979 at <http://www.state.gov/documents/organization/58837.pdf>; Cape Verde/Senegal Treaty on Delimitation of the Maritime Frontier of 17 February 1993 [in force: 1 October 1993]; 1989 *Guinea-Bissau/Senegal Maritime Boundary Award*, Arbitral Tribunal: President Julio A. Barberis (Argentina), (1990) 94 RGDIP 204; 83 ILR 1; ASIL/IMB Vol.I (1993), Report No.4-4 (Adede), at 867 at <http://www.brill.nl/international-maritime-boundaries-3> & ASIL/IMB Vol.III (1998), Report No.4-4(4)/(5) (Prescott), at 2251 at <http://www.brill.nl/international-maritime-boundaries-0>; Norway's Strengthened CLCS Assistance to Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone of 22 September 2011 at <http://www.norwaypost.no/news/norway-strengthens-agreement-with-african-nations-25738.html>; *supra* note 3.

³⁶⁰*Guinea-Bissau v. Senegal Arbitral Award of 31 July 1989 (Request for the Indication of Provisional Measures)* Order, ICJ Reports 1990, 64, President J.M. Ruda concurring and *Guinea-Bissau v. Senegal* Judgment, ICJ Reports 1991, 53, President Sir Robert Jennings concurring; Notes Verbales of Guinea-Bissau and Senegal of 14 November 1991 to the UN Secretariat concerning the ICJ Judgment, *UN Law of the Sea Bulletin* 52, 53 (1992 No.20) at www.un.org/Depts/los; *Guinea-Bissau v. Senegal Maritime Delimitation (Discontinuance)* Order, ICJ Reports 1995, 423, President M. Bedjaoui. The case was discontinued in a follow-up to conclusion of the Guinea-Bissau/Senegal Dakar Joint Management and Cooperation Agreement of 14 October 1993 and Bissau Protocol on the Establishment and Functioning of the International Agency of 12 June 1995 [both in force: 21 December 1995], *UN Law of the Sea Bulletin* 40, 42 (1996 No.31) and AGC at <http://agc.sn/en/index.php> and Map of Guinea-Bissau/Senegal Dakar Joint Management Zone at <http://www.rocksources.com/senegal-guinea-bissau/category144.html>; *ICJ Press Release* No.95/36; ASIL/IMB Vol.III (1998), Report No.4-4(4)/(5) (Prescott), at 2251 at <http://www.brill.nl/international-maritime-boundaries-0>; Guinea-Bissau/Senegal Joint Management and Cooperation Zone of 21 October 2003 at www.rigzone.com/news/article_pf.asp?a_id=9025 and September 2010 at <http://www.highbeam.com/doc/1G1-99599770.html>. Cf. *Arbitral Award* Judgment, ICJ Reports 1991, 74-75, Declaration of Judge Tarassov, 79, Separate Opinion of Vice-President Oda, 91, Joint Dissent of Judges Aguilar and Ranjeva, 120, Dissent of Judge Thierry, 185 at www.icj-cij.org.

Guinea-Bissau's Preliminary Submission of 8 May 2009 was filed with the CLCS without prejudice to its delimitations with Senegal as specified above and with Guinea under the 1985 *Guinea/Guinea-Bissau Delimitation of the Maritime Boundary Award*.³⁶¹ The 1985

³⁶¹Guinea-Bissau's Preliminary Submission of 8 May 2009, Section 6: Maritime Delimitations and Other Issues at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/gnb2009preliminaryinfo.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; 1985 *Guinea/Guinea-Bissau Delimitation of the Maritime Boundary Award*, (1985) 89 RGDIP 484; (1986) 25 ILM 251; No.441/Stuyt; ASIL/IMB Vol.I (1993), Report No.4-3 (Adede), at 857 at <http://www.brill.nl/international-maritime-boundaries-3> & ASIL/IMB Vol.V (2005), Report No.4-3 Add.1/Corr1, at 3621 at <http://www.brill.nl/international-maritime-boundaries>; 1989 *Guinea-Bissau/Senegal Award*, ICJ Judgment and Agreement, *supra* notes 359-360; Norway's Strengthened CLCS Assistance to Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone of 22 September 2011 at <http://www.norwaypost.no/news/norway-strengthens-agreement-with-african-nations-25738.html>; and *supra* note 3.

Guinea/Guinea-Bissau Award is also relevant to Guinea's Preliminary Submission of 11 May 2009, which in addition was without prejudice to Guinea/Sierra Leone delimitation.³⁶²

The Preliminary Submissions of Cape Verde, Mauritania, Gambia, Senegal, Guinea-Bissau and Guinea discussed above have all expressly classified their pending (but not necessarily disputed) outer CS delimitations as disputes under Rule 46 and Annex I of the CLCS Rules of Procedure.

³⁶²Guinea's Preliminary Submission of 11 May 2009, Delimitation of Maritime Boundaries and Other Matters at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/gin2009infopreliminaire.pdf; Sierra Leone's Preliminary Submission of 5 May 2009, paras 4-5, Figure 5: Outer Limit of the 12-Mile TS, 24-Mile CZ, 200-Mile EEZ and 350-Mile CS of Sierra Leone, Guinea and Liberia, Figure 6: Outer Limits Plus Equidistant Boundaries Between Sierra Leone, and Both of Guinea and Liberia at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/sle2009preliminaryinformation.pdf, listed further *infra*, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; 1985 *Guinea/Guinea-Bissau Delimitation of the Maritime Boundary* Award, (1985) 89 RGDIP 484; (1986) 25 ILM 251; No.441/Stuyt; ASIL/IMB Vol.I (1993), Report No.4-3 (Adede), at 857 at <http://www.brill.nl/international-maritime-boundaries-3> & ASIL/IMB Vol.V (2005), Report No.4-3 Add.1/Corr1, at 3621 at <http://www.brill.nl/international-maritime-boundaries>; Norway's Strengthened CLCS Assistance to Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone of 22 September 2011 at <http://www.norwaypost.no/news/norway-strengthens-agreement-with-african-nations-25738.html>; *supra* note 3. Note also *Panama/Guinea-Bissau Virginia G (Prompt Release)* of 5 July 2011, ITLOS Case No.19 concerning 14-month arrest of Panamian oil tanker *Virginia G* in Guinea-Bissau's EEZ at http://www.itlos.org/fileadmin/itlos/documents/press_releases_english/pr_168_E.pdf.

The Preliminary Submission of 5 May 2009 of Sierra Leone [located between Guinea and Liberia, of which CLCS deadline is only in September 2018] noted that there were no relevant disputes to this Preliminary Submission which was filed pursuant to UNCLOS Article 76(10) and Article 9 of Annex II without prejudice to the outer CS delimitations between Sierra Leone and any adjacent coastal states and to any other future maritime delimitation with any other coastal state.³⁶³

Morocco, Portugal, Spain

The southern limit of Ireland's 2005 Partial (Porcupine Abyssal Plain) Submission³⁶⁴ formed the starting point of the outer continental shelf in the 2006 Joint Submission of France, Ireland, Spain and the United Kingdom in respect of the Celtic Sea and the Bay of Biscay; this outer continental shelf extends to a point on the Spanish 200-mile shelf limit and does not involve any dispute between these four and any other state(s).³⁶⁵ On 11 May 2009 Spain filed with CLCS its Partial (Galicia Bank) Submission and Preliminary Partial (West of the Canary Islands) Submission and Portugal filed on that day its Partial (Madeira Islands) Submission, of which Spain's Partial (Galicia Bank) Submission expressly informed the CLCS that it did not

³⁶³Sierra Leone's Preliminary Submission of 5 May 2009, paras 4-5, Figure 5: Outer Limit of the 12-Mile TS, 24-Mile CZ, 200-Mile EEZ and 350-Mile CS of Sierra Leone, Guinea and Liberia, Figure 6: Outer Limits Plus Equidistant Boundaries Between Sierra Leone, and Both of Guinea and Liberia at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/sle2009preliminaryinformation.pdf, http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm & http://www.un.org/Depts/los/clcs_new/clcs_home.htm; Ghana, Cote d'Ivoire, Liberia and Sierra Leone Oil of 19 October 2009 at http://www.rigzone.com/news/article.asp?a_id=81525 & http://www.rigzone.com/news/image_detail.asp?img_id=6323&a_id=81525; Ghana Oil Experience Shows the Way to Sierra Leone, Liberia and Guineas of 21 April 2011 at <http://www.voanews.com/english/news/africa/Warning-Signs-Gather-Over-Ghanas-Oil-Fields-120426944.html>; Norway's Strengthened CLCS Assistance to Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone of 22 September 2011 at <http://www.norwaypost.no/news/norway-strengthens-agreement-with-african-nations-25738.html>; Liberia and Sierra Leone Oil of 21 February 2012 at <http://www.bbc.co.uk/news/world-africa-17115042>, http://www.rigzone.com/news/article.asp?a_id=115365, http://www.rigzone.com/news/article.asp?a_id=115355 & http://www.rigzone.com/news/region.asp?r_id=3; *supra* note 3.

³⁶⁴Ireland's 2005 Partial (Porcupine Abyssal Plain) Submission, Notes Verbales of Denmark of 19 August and Iceland of 24 August 2005 and CLCS Recommendations of 5 April 2007, Section D: Matters Related to Unresolved Disputes at www.un.org/Depts/los/clcs_new/submissions_files/submission_irl.htm, *supra* note 29.

³⁶⁵France/Ireland/Spain/UK's 2006 Joint (Celtic Sea-Bay of Biscay) Submission, Section 5: Absence of Disputes and CLCS Recommendations of 24 March 2009 at www.un.org/Depts/los/clcs_new/submissions_files/submission_frgbires.htm & www.un.org/Depts/los/clcs_new/clcs_home.htm; *UN Secretary-General Oceans Report*, UN Doc. A/63/63, para.26 (2008); 22nd CLCS Session, 18 August-12 September 2008, *Press Release SEA/1908* of 12 September 2008 at www.un.org/News/Press/docs//2008/sea1908.doc.htm; France's Extraplac Submission to the CLCS by 2009 at www.extraplac.fr/FR/extensions/Iroise.php & <http://www.extraplac.fr/FR/extensions/geographie.php>; *supra* note 3.

prejudice delimitation of the outer CS resulting from the France/Ireland/Spain/UK's 2006 Joint (Celtic Sea-Bay of Biscay) Submission.³⁶⁶

Spain's 2009 Partial (Galicia Bank) Submission further informed the CLCS in Section 5: Absence of Disputes that Spain and Portugal have identified an "Area of Common Interest" in the Galicia Bank beyond 200 miles where they have agreed on the outer CS limit and the Submission authorized CLCS to make use of any information and data contained in it that may also be relevant to Portugal's 2009 (Madeira Islands) Submission. Spain and Portugal have, moreover, agreed that the outer CS delimitation in this Area of Common Interest does not prejudice the lateral outer CS delimitation between them, which shall be resolved in the future by the agreement of both states, in accordance with applicable rules and principles of international law. Similarly, Portugal's 2009 (Madeira Islands) Submission noted the Absence of Disputes (Section 6) between Portugal and Spain and between Portugal and Morocco and stressed that, pursuant to UNCLOS Article 76(10), the CLCS Recommendations on Portugal's Submission shall be without prejudice to future delimitation in the Galicia Bank Region.³⁶⁷

In its Note Verbale of 28 May 2009, Portugal voiced no objection to the CLCS making Recommendations on Spain's 2009 Partial (Galicia Bank) Submission to the extent that pursuant to UNCLOS Article 76(10), they will be without prejudice to the future Portugal/Spain outer CS delimitation and Spain expressed the same view in its Notes Verbales of 28 May and 10 June 2009 concerning Portugal's 2009 (Madeira Islands) Submission. Morocco's three Notes Verbales of 16 May 2009 each announced that Morocco (whose CLCS deadline is only in May 2017) will convey in due course its position on Spain's Partial (Galicia Bank) Submission, Spain's Preliminary Partial (West of the Canary Islands) Submission and on Portugal's Submission; in the meantime, all three of Morocco's Notes Verbales rejected any act intended to

³⁶⁶Spain's 2009 Partial (Galicia) Submission to the CLCS, Section 5: Absence of Disputes, referring in paras 1.2 & 5.2 to the 2006 Joint Submission, *supra*; Notes Verbales of Morocco and Portugal of 16 and 28 May 2009 at www.un.org/Depts/los/clcs_new/submissions_files/submission_esp_47_2009.htm & http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Spain's 2009 Preliminary Partial (West of the Canary Islands) Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/esp_can_2009_preliminaryinfo.pdf and Morocco's Note Verbale of 16 May 2009 at http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; Maritime Delimitation Dispute Between Morocco and Spain (Canary Islands) at www.afrol.com/News2002/mor015_oil_spain.htm; Portugal's 2009 (Madeira Islands) Submission, Section 6: Absence of Disputes; Note Verbale of Morocco of 16 May 2009; Notes Verbales of Spain of 28 May and 10 June 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_prt_44_2009.htm, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm; Statement by the CLCS Chairman, UN Doc. CLCS/66 (30 April 2010) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/; *supra* note 3.

³⁶⁷See also Portugal's Azores Archipelago, which lies in the middle of the Atlantic Ocean, about 1,500 kilometres from Lisbon and 3,900 kilometres from the east coast of North America, which comprises 9 islands with areas varying between 747 square kilometres (Sao Miguel) and 17 square kilometres (Corvo Island, having only 400 inhabitants), and which generate EEZ of 1.1 million square km at <http://en.wikipedia.org/wiki/Azores>, www.wikinfo.org/wiki.php?title=Corvo_Island. For Inaugural OSPAR Rainbow MPA at Portugal's (Azores) Outer CS Beyond 200 Miles, see M.C. Ribeiro, "The Rainbow: The First National Marine Protected Area Proposed Under the High Seas" (2010) 25 IJMCL 183-207 at <http://www.brill.nl/estu>.

unilaterally establish the outer CS and reaffirmed Morocco's commitment to the equitable boundary delimitation as codified in UNCLOS Article 83.³⁶⁸

It may be noted that Spain and Morocco have also been involved in a longstanding territorial dispute over the tiny rocky Perejil (Parsley)/Leila (Toura) Islet (of 13.5 hectares and 300 metres long), which is located in the Strait of Gibraltar, 200 metres from Morocco's coast and which is used by Moroccans for goat breeding and is uninhabited but which has, according to Spain (considering Parsley a part of its North African territories), been used for smuggling drugs and immigrants.³⁶⁹ In its Declaration made on 31 May 2007 upon ratification of the UNCLOS, Morocco affirmed its sovereignty over Sebta, Melilla, the islet of Al-Hoceima, the rock of Badis and the Chafarinas Islands and pointed out that it has never ceased to demand the recovery of these territories, which are under Spanish occupation, whereas in its Reply of 10 September 2008, Spain declared that:

³⁶⁸Note Verbale of Morocco of 16 May 2009 at www.un.org/Depts/los/clcs_new/submissions_files/submission_esp_47_2009.htm, Note Verbale of Morocco of 16 May 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/submission prt_44_2009.htm, and Note Verbale of Morocco of 16 May 2009 at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/mar_re_esp2009e.pdf & http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm; Statement by the CLCS Chairman, UN Doc. CLCS/66 (30 April 2010) at www.un.org/Depts/los/clcs_new/clcs_home.htm & www.un.org/Depts/los/, *supra*. On the same contents of Morocco's Note Verbale of 26 May 2009 on Mauritania's 2009 Submission at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/mrt2009informationpreliminaire.pdf & http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/mar_re_mrt2009.pdf & http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm, see *supra* note 357.

³⁶⁹On Perejil/Leila Islet (known during World War II as Punta Alemana because it was used as a bunker by the Nazi army) disputed by Morocco/Spain together with coastal city enclaves and several other small islands/rocks located along Morocco's Mediterranean coast, see Perejil (Parsley)/Leila (Toura) Islet at http://en.wikipedia.org/wiki/Isla_Perejil, www.wordiq.com/definition/Isla_Perejil & www.maec.gov.ma/Arabe/leila.htm; Chaffarinas at <http://en.wikipedia.org/wiki/Chaffarinas>; Ceuta and Melilla at http://news.bbc.co.uk/2/hi/europe/country_profiles/4209538.stm and http://en.wikipedia.org/wiki/Category:Territorial_disputes_of_Spain; Morocco's 1975 TS Baselines Decree at www.un.org/Depts/los/, which covers Parsley/Leila Islet; G. O'Reilly, "Ceuta and the Spanish Sovereign Territories: Spanish and Moroccan Claims" (1994 No.2) 1 *IBRU Boundary and Territory Briefings* and Spanish or Moroccan Land? of 16 July 2002 at <http://news.bbc.co.uk/2/hi/europe/2131853.stm>; Morocco/Spain Maritime Delimitation and Oil of 25 May 2002 at www.afrol.com/News2002/mor015_oil_spain.htm; Spain/Morocco Crisis over Parsley Rock of 23 July 2002 at www.wsws.org/articles/2002/jul2002/parl-j23.shtml, noting that Parsley Rock contains a large cave that could accommodate about 200 people & www.arabicnews.com/ansub/Daily/Day/020723/2002072326.html, including Morocco/Spain Foreign Ministers' Meeting with U.S. Secretary Colin Powell in Rabat on 22 July 2002 at www.arabicnews.com/ansub/Daily/Day/020720/2002072049.html & <http://archives.cnn.com/2002/WORLD/europe/07/20/morocco.spain/> and Morocco's Statement of 16 July 2002 at www.voanews.com/english/archive/2002-07/a-2002-07-31-Spain.cfm, www.arabicnews.com/ansub/Daily/Day/020716/2002071620.html & http://news.bbc.co.uk/2/hi/not_in_website/syndication/monitoring/media_reports/2142606.stm & <http://news.bbc.co.uk/2/hi/europe/2141640.stm>; Morocco Oil in Territorial Waters off Melilla, the Chaffarinas and Alboran Islands of 4 August 2004 at www.rigzone.com/news/article.asp?a_id=15323; V. Prescott & C. Schofield, *The Maritime Political Boundaries* (2005) 270-271, 390 and Figure 16.3 at 616 (2005) at <http://www.brill.nl/maritime-political-boundaries-world>.

(i) The autonomous cities of Ceuta and Melilla, the Penon de Alhucemas, the Penon Velez de la Gomera, and the Chafarinas Islands are an integral part of the Kingdom of Spain, which exercises full and total sovereignty over said territories, as well as their marine areas, in accordance with the UNCLOS.

(ii) The Moroccan laws and regulations on marine areas are not opposable to Spain except insofar as they are compatible with the UNCLOS, nor do they have any effect on the sovereign rights or jurisdiction that Spain exercises, or may exercise, over its own marine area, as defined in accordance with the Convention and other applicable international provisions.³⁷⁰

Morocco and Spain have moreover been involved in construction of Morocco (Tangiers)-Spain (Tarifa) undersea railway tunnel through the Strait of Gibraltar, the so-called Africa-Europe Fixed Link, of which completion was scheduled for the year 2025.³⁷¹

Conclusion

The full docket of the CLCS and an intimate link between process of disputed and undisputed boundary delimitations (by states and the judicial-arbitral fora) and process of delineation of outer CS limit beyond 200 miles (by the CLCS) will ensure that the CLCS remains in the UN-based center of stimulating law of the sea development and peaceful settlement of oceans disputes as a part of global system of the peace and security for at least the next two decades, when the remaining Submissions will be filed (e.g., by Honduras-2012, Kiribati-2013, Canada-2013, Denmark-2014, Morocco-2017, Liberia-2018) and when Preliminary Submissions will be replaced by their full versions (e.g., by Angola, DR Congo (Kinshasa), Republic of Congo (Brazzaville), Cameroon, Gabon, Sao Tome & Principe, Sierra Leone). In addition, from amongst the present 35 non-parties (of which 18 are land-locked) to the UNCLOS, some 7 states - including the United States, Colombia, Ecuador, El Salvador, Iran, Peru and Timor-Leste - may file Submissions with the CLCS if they become UNCLOS parties.³⁷² The UNCLOS and CLCS Rules of Procedure as well as vast state practice of filing full and/or preliminary Submissions with the CLCS surveyed in this article clearly indicate that the CLCS' Recommendations must in no way encroach upon existing and prospective boundary delimitations, nor must they prejudice other land or maritime disputes, which can thus well be adjudicated-arbitrated or otherwise resolved prior, or in parallel to, or

³⁷⁰Morocco's Declaration of 31 May 2007, in *UN Law of the Sea Bulletin* 14 (2007 No.64); Spain's Reply of 10 September 2008, *id.* 32 (2009 No.68) at www.un.org/Depts/los/.

³⁷¹Africa-Europe Fixed Link of 19 July 2008 at <http://news.bbc.co.uk/2/hi/europe/7515125.stm>; 15 October 2010 at <http://www.african-bulletin.com/news/640-tarifatangiers-the-spain-africa-link-in-2025.html> and http://en.wikipedia.org/wiki/Strait_of_Gibraltar_crossing.

³⁷²See Overview of UNCLOS States Parties at http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm and references to practice of the United States, *supra* notes 5 & 22.

sometimes in a follow-up to the CLCS' engagement. For sake of transparency, it would be appreciable that in the case of apparent diplomatic tensions and disputes accompanying given Submissions, either nationals of both states involved in such tensions and disputes were represented in the CLCS or none of these states were represented during consideration and making Recommendations by the CLCS on such Submissions.³⁷³ While deferral is not the desired outcome of making Submissions, even such deferred (like, e.g., those concerning South China Sea/Spratlies-Paracels) - and certainly all other - Submissions will continue to play a distinct role in searching by states for means of resolution of their disputed and undisputed maritime boundary delimitations and other unresolved land or maritime disputes.

³⁷³This would prevent possible allegations of bias, as could be exemplified by membership of Trinidad and Tobago but not of Barbados in the CLCS when it adopted its 2010 Recommendations on Barbados 2008 Submission, *supra* notes 93-102, or by membership of Argentina but not of Great Britain in the CLCS when it adopted its 2010 Recommendations on the UK's 2008 Partial Submission (Ascension Island), which were protested in UK Note Verbale of 11 January 2011, *supra* notes 121-122.