

THE INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE,
THE HAGUE, THE NETHERLANDS



THE *ASIA CUP 2022* INTERNATIONAL LAW MOOT COURT COMPETITION

CASE CONCERNING THE CHELONIA TRENCH AND THE OCEAN CHALLENGER

THE STATE OF ARCHANG
(APPLICANT)

v.

THE REPUBLIC OF RHOTIA
(RESPONDENT)

MEMORIAL FOR THE APPLICANT

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SUMMARY OF PLEADINGS

I.

The Court has jurisdiction based upon the optional clause declarations of the Parties under Article 36(2) of the Statute of the Court. The jurisdiction over our case is not precluded by Rhotia's reservation. It exempts "disputes regarding which the parties to the dispute *have agreed or shall agree* to have recourse to some *other method or methods of settlement*." In the present dispute, there are no such agreed procedures of dispute settlement. Neither of *the result of consultations until 2019* nor *the ratifications of the United Nations Convention on the Law of the Sea* constitutes the agreed procedures.

Archang's claims are admissible before the Court. Archang's second pleading concerns the delimitation of the continental shelves in the Chelonia Trench area. What is required to deal with the dispute is not *a recommendation by the Commission on the Limits of the Continental Shelf* but *the establishment of the existence of overlapping claims for the continental shelf* which the facts of the present case sufficiently establish. Also, Archang's third claim is admissible. *First*, Archang as a flag State is entitled to bring claims in respect of the *Ocean Challenger* and its crews. *Second*, local remedies need not be exhausted in our case since the rights of Archang are directly violated.

II.

The delimitation of the continental shelf beyond 200 nautical miles between Archang and Rhotia is to be effected on the basis of natural prolongation. *First*, in the delimitation of the continental shelf, weight shall be put on considerations that are pertinent to the institution of the continental shelf. Considering the relevant provisions of the United Nations Convention on the Law of the Sea, geological and geomorphological natural prolongation has significance in the institution of the continental shelf and shall play important role in the present delimitation. *Second*, on the other hand, equidistance need not necessarily be applied in our case in light of the difference with respect to the geographical configuration of maritime areas. Rather, equidistance is even inappropriate in the case of the continental shelf beyond 200 nautical miles because equidistance is derived from the consideration of proximity.

III.

By boarding the *Ocean Challenger* and initiating criminal proceedings against Ms. Kashee, Rhotia violated Articles 92, 87(1)(a), and 238 of the United Nations Convention on the Law

of the Sea. As to Article 92 on the exclusive flag State jurisdiction, Rhotia's series of acts contravened the provision as it amounts to the application and enforcement of its laws over the *Ocean Challenger* and its crews including Ms. Kashee. As to Article 87(1)(a) on the freedom of navigation and Article 238 on the right to conduct marine scientific research, Archang's rights under this Article were both infringed when Rhotia's series of acts caused fear or hindrance to the Ocean University of Archang in deciding to order the *Ocean Challenger* to stop the marine scientific research and leave the area even for the future.

Besides, Rhotia cannot justify its illegal acts as an exercise of sovereign rights conferred by the Convention nor as a countermeasure. *First*, Rhotia did not even have sovereign rights in the disputed area and, in any case, Rhotia's acts do not fall within the ambit of its sovereign rights. *Second*, Rhotia did not satisfy the necessary conditions for countermeasures.

IV.

Archang did not violate Article 83 of the United Nations Convention on the Law of the Sea by allowing the *Ocean Challenger* to conduct marine scientific research. As to Article 83(1), Archang satisfied its obligation to negotiate in good faith. As to Article 83(3), Archang did not violate its obligation to enter into provisional arrangements as this obligation did not even arise in the present case. Furthermore, Archang did not contravene its obligation not to jeopardize or hamper the reaching of the final delimitation agreement because the mere acquisition of information about natural resources of the continental shelf does not amount to a violation.

PLEADINGS

I. THE COURT HAS JURISDICTION OVER THIS CASE AND THE CLAIMS BY THE STATE OF

ARCHANG ARE ADMISSIBLE.

A. The Court has jurisdiction over this case based on the optional clause declarations.

Archang invoked the declarations of the Parties under Article 36(2) of the Statute of the Court as the basis of its jurisdiction. Rhotia's declaration contains a reservation but it can be invoked neither on the grounds of the negotiation until 2019 (1.) nor of the ratifications of the United Nations Convention on the Law of the Sea ("UNCLOS") (2.).

1. Rhotia's reservation does not apply based on the results of the negotiation until 2019.

As the Court has ruled, a reservation must be interpreted "in harmony with a natural and reasonable way of reading the text, having due regard to the intention."¹ The natural reading of "other method or methods of settlement" indicates that the agreed method functions as an alternative to a reference to the Court.² Moreover, no fact indicates Rhotia's intention to part from that. Thus, Rhotia's reservation shall be interpreted to exempt disputes that the Parties *have agreed to be obliged* to settle under certain procedures other than a reference to the Court. The existence of such a binding agreement may be determined by "the subsequent accounts of the meeting."³ Here, Rhotia unilaterally discontinued consultations and has failed to respond to Archang's request for resuming the negotiation.⁴ *Ergo*, the Parties have not agreed to be bound by the consequence of the negotiation until 2019.

¹ Anglo-Iranian Oil Co. (U.K. v. Iran), 1952 I.C.J. 90, at 104 (July 22); Fisheries Jurisdiction (Spain v. Can.), 1998 I.C.J. 430, ¶49 (Dec. 4).

² *Cf.*, Certain Phosphate Lands in Nauru (Nauru v. Austl.), Preliminary Objections, 1992 I.C.J. 240, ¶11 (June 26).

³ Aegean Sea Continental Shelf (Greece v. Turk.), 1978 I.C.J. 3, ¶104 (Dec. 19).

⁴ *Moot Problem*, ¶10.

2. Rhotia’s reservation does not apply based on the Parties’ ratifications of UNCLOS.

Rhotia may argue that they “have agreed” to the procedures provided for in Part XV of UNCLOS. However, under Article 282, agreed procedures are applied “in lieu” of the procedures of Section 2. Accordingly, the question remains which procedures are prioritized, those resulting from optional clause declarations or those provided for in Section 2. UNCLOS gives precedence to the former **(a.)** and Rhotia’s reservation does not overrule the priority **(b.)**.

a. UNCLOS gives priority to the procedures resulting from optional clause declarations.

Indian Ocean affirmed the preference for an agreement to the Court’s jurisdiction through optional clause declarations by interpreting Article 282.⁵ This interpretation is consistent with the ordinary meaning⁶ and the context⁷ and corroborated by *les travaux préparatoires*.⁸

b. Rhotia’s reservation does not give priority to the procedures contained in Section 2.

Accordingly, Rhotia’s reservation cannot apply unless it reverses the preference. Such an effect of the reservation must be “*sufficiently clear*” to avoid “the danger of the denial of justice.”⁹

Rhotia’s reservation cannot be interpreted in such a manner considering its actual words and Rhotia’s intention. Before making its optional clause declaration in 2000, Rhotia

⁵ *Maritime Delimitation in the Indian Ocean (Som. v. Kenya)*, Preliminary Objections, 2017 I.C.J. 3, ¶¶123-130 (Feb. 2) [hereinafter *Indian Ocean*].

⁶ *Ibid.* ¶126; United Nations Convention on the Law of the Sea art. 282, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

⁷ *Indian Ocean*, *supra* note 5, ¶¶123-26; UNCLOS, *supra* note 6, arts. 280-282, 286-287, 297-298.

⁸ *Indian Ocean*, *supra* note 5, ¶127; Third United Nations Conf. on the Law of the Sea, Memorandum by the President of the Conf. on document A/CONF.62/WP.9, ¶24, UN.Doc. A/CONF.62/WP.9/Add.1 (Mar. 31 1976); Third United Nations Conf. on the Law of the Sea, Rep. of the Chairman of the Drafting Comm. to the plenary of 11 August 1981, at 19, UN.Doc. A/CONF. 62/L. 75/Add.1.

⁹ *Factory at Chorzów (Ger. v. Pol.)*, Jurisdiction, 1927 P.C.I.J. (ser. A) No. 9, at 30 (July 26) (emphasis added).

ratified UNCLOS in 1992 and realized the maritime disputes in the mid-1990s.¹⁰ Nevertheless, the reservation contains no terms that exclude disputes concerning a particular subject such as the maritime delimitation.¹¹ Indeed, *Indian Ocean* affirmed the jurisdiction regardless of Kenya's reservation, which was identical to Rhotia's.¹² Hence, the reservation cannot apply.

B. Archang's claims are admissible before the Court.

1. Archang's second claim is admissible.

Nicaraguan Coast confirmed that "a recommendation from CLCS [...] is not a prerequisite" for the delimitation of the continental shelf ("CS").¹³ The true requisite is to establish that the continental margins overlap in the disputed area.¹⁴ In our case, the overlapping continental margins are established following Article 76(4)(a)(ii).¹⁵ Thus, the second claim is admissible.

2. Archang's third claim is admissible.

A flag State "is entitled to bring claims in respect of alleged violations of its rights under [UNCLOS] which resulted in damages to" "every person involved or interested in [a ship's] operations."¹⁶ Here, Ms. Kashee is the captain of the *Ocean Challenger* ("OC") and the vessel was flagged to Archang.¹⁷ Furthermore, local remedies need not be exhausted when the rights

¹⁰ *Moot Problem*, ¶¶4 & 20.

¹¹ *Indian Ocean*, *supra* note 5, ¶128.

¹² *Indian Ocean*, *supra* note 5, ¶¶31 & 130-33.

¹³ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea*, Preliminary Objections, 2016 I.C.J. 3, ¶114 (Mar. 17).

¹⁴ *Territorial and Maritime Dispute (Nicar. v. Colom.)*, Judgement, 2012 I.C.J. 624, ¶129 (Nov. 19).

¹⁵ *Moot Problem*, ¶¶3 & 6.

¹⁶ *M/V Virginia G (Pan. v. Gunia-Bissau)*, Case No.19, Judgment of Apr. 14, 2014, ITLOS Rep.2014, 4, ¶¶127-28 [hereinafter *Virginia*]; *M/V Norstar Case (Pan. v. Italy)*, Case No.25, Judgment of Nov. 4, 2016, ITLOS Rep.2018-2019, 44, ¶¶229-31 [hereinafter *Norstar*]; *M/V Saiga (St. Vincent v. Guinea)*, Case No.2, Judgment of July 1, 1999, ITLOS Rep.1999, 10, ¶¶105-06 [hereinafter *Saiga*].

¹⁷ *Moot Problem*, ¶¶11 & 16.

of States are directly violated.¹⁸ Archang submits that Rhotia violated Articles 87, 92, and 238 of UNCLOS,¹⁹ all of which provide for States' rights.²⁰ Thus, the third claim is admissible.

II. THE DELIMITATION OF THE CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES BETWEEN THE STATE OF ARCHANG AND THE REPUBLIC OF RHOTIA IN THE CHELONIA TRENCH AREA IS TO BE EFFECTED ON THE BASIS OF NATURAL PROLONGATION.

The delimitation is to be effected “to achieve an equitable solution.”²¹ Accordingly, the Court shall apply “equitable principles, in accordance with the ideas which have always underlain the development of legal régime of [CS].”²² As a result, “only those [considerations] that are pertinent to the institution of [CS]” bear the *weight*.²³ Here, the subject of delimitation is located more than 200 nautical miles (“NM”) away from the coastlines.²⁴ Regarding the delimitation of such CSs, the delimitation method shall put weight upon natural prolongation (“NP”) (A.) and not upon other considerations weighed in the proliferated methods (B.).

A. NP shall be weighed in the delimitation of CSs beyond 200 NM.

Under Article 76 of UNCLOS, NP is defined by the characteristics and structures of the seabed and subsoil *geologically* or *geomorphologically*.²⁵ This NP has significance in the institution

¹⁸ Virginia, *supra* note 16, ¶153; Saiga, *supra* note 16, ¶98.

¹⁹ *Infra* note Memorial III.

²⁰ UNCLOS, *supra* note 6, art.92(1); Norstar, *supra* note 16, ¶¶269-70; Virginia, *supra* note 16, ¶157; S. ROSENNE, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982 A COMMENTARY VOLUME IV, 440 (M. H. Nordquist, S. Rosenne, A. Yankov & N. R. Grandy eds., 1991) [hereinafter Virginia Commentary IV].

²¹ UNCLOS, *supra* note 6, art.83(1).

²² North Sea Continental Shelf (Ger./Den.; Ger./Neth.), Judgment, 1969 I.C.J. 3, ¶85 (Feb. 20) [hereinafter North Sea]; Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, 1985 I.C.J. 13, ¶45 (June 3) [hereinafter Libya/Malta]; Maritime Delimitation in the Black Sea (Rom. v. Ukr.), Judgment, 2009 I.C.J. 61, ¶120 (Feb. 3) [hereinafter Black Sea].

²³ Libya/Malta, *supra* note 22, ¶48.

²⁴ *Moot Problem*, ¶¶3 & 6; *Clarifications*, ¶1.

²⁵ North Sea, *supra* note 22, ¶95; Libya/Malta, *supra* note 22, ¶¶66-68; UNCLOS, *supra* note 6, art.76(1)(3)(4); K. HIGHT, INTERNATIONAL MARITIME BOUNDARIES 196 (J. I.

of extended CS (1.) and NP does function as a basis of the delimitation (2.).

1. Geological and geomorphological NP is significant in the institution of extended CS.

Bay of Bengal mentioned that “[NP] in article 76, paragraph 1, of [UNCLOS], should be understood in light of the subsequent provisions.”²⁶ Paragraph 4(a)(i) focuses on the thickness of the sedimentary rocks as a *geologic* feature; paragraph 4(a)(ii) emphasizes “minimal technically practical width of the boundary zone” reflecting a *geomorphological* feature.²⁷ Therefore, concerning CS beyond 200 NM, the weight shall be accorded to NP.

2. NP plays an important role in the present delimitation.

The Court has, at least indirectly, affirmed *geological* or *geomorphological* factors in the delimitation of extended CS.²⁸ Here, the subject of delimitation is divided, “geologically and geomorphologically.”²⁹ Thus, the delimitation shall be effected based on NP.

B. Other considerations in the proliferated methods shall not bear the weight.

The Court has recently adopted a two-stage or three-stage approach to maritime delimitation and equidistance has been applied as a first step.³⁰ The latter has been accepted in the delimitation of CS beyond 200 NM *between neighboring States*.³¹ Those methods have been

Charney & L. M. Alexander eds., 1993) [hereinafter HIGHET].

²⁶ Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangl. v. Myan.), Case No. 16, Judgment of Mar. 14, 2012, ITLOS Rep.2012, 4, ¶437.

²⁷ S. N. NANDAN & S. ROSENNE, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982 A COMMENTARY VOLUME I, 878-79 (M. H. Nordquist, S. N. Nandan & S. Rosenne & N. R. Grandy eds., 1993) [hereinafter Virginia Commentary I].

²⁸ HIGHET, *supra* note 25, 196; *cf.*, Libya /Malta, *supra* note 22, ¶77.

²⁹ *Moot Problem*, ¶3.

³⁰ Libya /Malta, *supra* note 22, ¶60; Black Sea, *supra* note 22, ¶¶115-20.

³¹ The Bay of Bengal Maritime Boundary Arbitration between the People’s Republic of Bangladesh and the Republic of India (Bangl. v. India), 2010-16, Award, 32 R.I.A.A. 1, ¶458 (Perm. Ct. Arb., 2014).

adopted to “accommodate both the need for predictability and stability.”³² In fact, *Black Sea* affirmed the first stage to “establish a provisional delimitation line, using methods that are *geometrically objective* and also *appropriate for the geology* of the area.”³³ Thus, it is not necessarily required to apply equidistance. Furthermore, as mentioned by this Court, “[t]he geographical configuration of maritime areas [...] is a fact on the basis of which the Court must effect the delimitation.”³⁴ Accordingly, the methods taken for delimitating CS within 200 NM or that beyond 200 NM of neighboring States do not automatically apply to our case. On the contrary, equidistance is derived from the consideration of proximity³⁵ and it is not given the weight in the delimitation of CS beyond 200 NM.³⁶

III. THE REPUBLIC OF RHOTIA VIOLATED UNCLOS BY BOARDING THE *OCEAN CHALLENGER* AND INITIATING CRIMINAL PROCEEDINGS AGAINST MS. KASHEE.

A. Rhotia violated Article 92 of UNCLOS.

Article 92 of UNCLOS obliges Rhotia not to prescribe, apply, and enforce its laws on the high seas over OC and its crews³⁷ which come under Archang’s exclusive jurisdiction.³⁸

Here, the superjacent water of the Chelonia Trench area (“CTA”) is a high sea.³⁹

Rhotia enforced and applied its national laws by boarding OC and initiating criminal

³² Arbitration between Barbados and the Republic of Trinidad and Tobago (Barb./Trin. & Tobago), Decision of 11 April 2006 27 R.I.A.A. 147, ¶232 (Perm. Ct. Arb., 2006); Libya/Malta, ¶45.

³³ *Black Sea*, *supra* note 22, ¶120 (emphasis added).

³⁴ Land and Maritime Boundary between Cameroon and Nigeria (Cameroon. v. Nigeria; Eq. Guinea intervening), Judgment, 2002 I.C.J. 303 ¶295 (Oct. 10).

³⁵ Libya/Malta, *supra* note 22, ¶43 (June 3); North Sea, *supra* note 22, ¶41 (Feb. 20).

³⁶ UNCLOS, *supra* note 6, art.76(1) & (4); *see supra* note Memorial II.A.1.

³⁷ M/V *Norstar* (Pan. v. It.), Case No.25, Judgment of Apr. 10, 2019, ITLOS Rep.2018-2019, 10, ¶225; The *Enrica Lexie* Incident (It./India), Award, 33 R.I.A.A 153, ¶527 (Perm.Ct. Arb. 2016) [hereinafter *Enrica Lexie*].

³⁸ *Moot Problem*, ¶¶3-6 & 11.

³⁹ *Moot Problem*, ¶¶5-6.

proceedings against Ms. Kashee.⁴⁰ Therefore, Rhotia violated Article 92(1) of UNCLOS.

B. Rhotia violated Articles 87(1) and 238 of UNCLOS.

1. In this case, Archang had the rights protected under UNCLOS.

First, under Article 87(1)(a) Archang had the right to freedom of navigation through OC in CTA. *Second*, under Article 238 Archang had the right to conduct marine scientific research (“MSR”) to “study the ecosystem around hydrothermal vents in [CTA].”⁴¹ The right to conduct MSR is subject to the rights and duties provided for in Article 246.⁴² However, Article 246 cannot be applied until the delimitation.⁴³ In any case, Article 246(5)(a) does not allow Rhotia to withhold its consent to the MSR which had no “direct significance for the exploitation and exploration of natural resources.”⁴⁴ *In casu*, Archang had the right under Article 238.

2. Rhotia violated the Archang’s rights protected under the Convention.

The right under Article 238 is specified in Article 87(1)(f).⁴⁵ *Enrica Lexie* found the rights under Article 87 to be violated by the interference in a physical or non-physical form that causes fear or hindrance and prevents the subject from exercising the rights.⁴⁶

Here, armed Rhotia’s officers boarded OC, and documents and materials related to the MSR by OC were seized.⁴⁷ It is indicated that the Ocean University of Archang was

⁴⁰ *Moot Problem*, ¶¶10, 17-18.

⁴¹ *Moot Problem*, ¶11; UNCLOS, *supra* note 6, art. 240.

⁴² UNCLOS, *supra* note 6, art. 238.

⁴³ Delimitation of the maritime boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire), Case No. 23, Judgment of Sept. 23, 2017, ITLOS Rep.2017, 4, ¶591 [hereinafter Ghana/Côte d’Ivoire].

⁴⁴ *Moot Problem*, ¶15.

⁴⁵ Virginia Commentary IV, *supra* note 20, 440.

⁴⁶ *Enrica Lexie*, *supra* note 37, ¶¶472 & 49.

⁴⁷ *Moot Problem*, ¶17.

informed of the situation and subject to fear or hindrance in ordering OC to stop the MSR and leave the area.⁴⁸ Further, the initiation of criminal proceedings caused fear or hindrance that the same procedures will be applied. This rendered it difficult for the University to conduct MSR in CTA again. Rhotia thus violated Articles 87(1)(a) and 238.

C. Rhotia's illegal acts are not justifiable.

Rhotia can justify its illegal acts neither because they are recognized in UNCLOS (1.), nor because its wrongfulness is precluded under customary international law (2.).

1. UNCLOS does not provide justification.

a. Rhotia cannot exercise sovereign rights over the disputed area.

Rhotia may submit that their acts are the exercise of sovereign rights under Article 77(1) of UNCLOS, and thus did not violate UNCLOS. However, sovereign rights exist only after the delimitation.⁴⁹ Absent any agreement on delimitation,⁵⁰ Rhotia did not even have these rights.

b. In any event, Rhotia's illegal acts are unjustifiable.

Article 78(2) of UNCLOS requires a coastal State of CS to ensure its exercise of sovereign rights is reasonable and necessary.⁵¹ This test requires a high threshold.⁵² In this case, interference of the MSR was the smallest. As to living natural resources, severe activities such as trawling for sedentary species were not included. As to non-living resources, even seismic

⁴⁸ *Moot Problem*, ¶¶16-17.

⁴⁹ *Ghana/Côte d'Ivoire*, *supra* note 43, ¶591.

⁵⁰ *Moot Problem*, ¶¶8-9.

⁵¹ *Cf.*, *Arctic Sunrise (Neth. v. Russ.)*, 2014-02, Award on the Merits, 32 R.I.A.A. 210, ¶329 (Perm. Ct. Arb., 2015); *Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland (Mauritius v. U.K.)*, 2011-03, Award, 31 R.I.A.A. 359, ¶540 (Perm. Ct. Arb., 2015).

⁵² S. N. Nandan & S. Rosenne, *United Nations Convention on the Law of the Sea 1982 A Commentary*, 905 (M. H. Nordquist, S. N. Nandan, S. Rosenne & N. R. Grandy eds., 1995).

surveys are estimated to have very little impact, considering their nature and purpose.⁵³ Therefore, Rhotia's acts which seriously interfered with the right to freedom of navigation as established above were not reasonable and necessary. Thus, Rhotia violated the Convention.

2. Rhotia cannot justify its illegal acts as countermeasures.

Rhotia cannot deploy countermeasures.⁵⁴ In the first place, there is no previous international wrongful act of Archang.⁵⁵ In any event, especially about the criminal proceedings, Archang was not called upon by Rhotia to make reparation.

IV. THE STATE OF ARCHANG DID NOT VIOLATE UNCLOS BY ALLOWING THE OCEAN CHALLENGER TO CONDUCT MARINE SCIENTIFIC RESEARCH.

In the transitional period to reach the final delimitation, the Parties are under the obligation set out in Article 83 of UNCLOS. To allow the MSR was fully consistent with it.

A. Archang did not violate Article 83(1) of UNCLOS.

Ghana/Cote d'Ivoire mentioned that, in negotiations, trying to "preserve the *status quo* as it saw it is" is consistent with "the obligation to negotiate in good faith" under Article 83(1).⁵⁶ Here, Archang had held 8 rounds of consultations until 2019 for a final resolution of the dispute.⁵⁷ Archang allowed the MSR, seeing that "both [Parties] should be allowed to conduct research freely" under the *status quo*.⁵⁸ Therefore, Archang did not violate Article 83(1).

⁵³ *Moot Problem*, ¶¶11 & 15.

⁵⁴ Int'l Law Comm'n, Rep. to the General Assembly on the work of its fifty-third session, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2), at 94 (2001); *Gabčíkovo-Nagymaros Project* (Hung./Slovk.), Judgment, 1997 I.C.J. 7, ¶84 (Sep. 25).

⁵⁵ *Infra* note Memorial IV.

⁵⁶ *Ghana/Côte d'Ivoire*, *supra* note 43, ¶604 (emphasis added).

⁵⁷ *Moot Problem*, ¶8.

⁵⁸ *Moot Problem*, ¶¶8, 10-11.

B. Archang did not violate Article 83(3) of UNCLOS.

UNCLOS Article 83(3) stipulates an obligation to make every effort to enter into provisional arrangements (“the positive obligation”) (1.) and an obligation not to jeopardize or hamper the reaching of the final agreement (“the negative obligation”) (2.).

1. Archang did not breach the positive obligation.

The positive obligation exists only when at least one of the parties tries to enter into provisional arrangements and notifies the intention to the other.⁵⁹ In our case, the Parties had not intended to reach provisional arrangements. They recognized that the regulation of MSR in CTA could only be solved by the final delimitation.⁶⁰ Furthermore, Rhotia has not requested to open negotiations on provisional arrangements. Hence, the positive obligation did not even arise.

2. Archang did not breach the negative obligation.

Guyana v. Suriname adopted that illegal activities involve “a permanent physical change” of the marine environment.⁶¹ It reflects the balance between effective use of a disputed area and the risk of prejudice to the rights of a potential coastal State.⁶² It should be noted that the mere acquisition of information about the resources of CS does not violate the obligation.⁶³ Here, the MSR implemented taking videos, sampling, and seismic surveys. None of them was to cause a permanent physical change.⁶⁴ Thus, allowing the MSR did not violate Article 83(3).

⁵⁹ *Ghana/Côte d’Ivoire*, *supra* note 43, ¶628.

⁶⁰ *Moot Problem*, ¶8.

⁶¹ *Delimitation of the Maritime Boundary between Guyana and Suriname (Guy. v. Surin.)*, 2004-04, Award, 30 R.I.A.A. 1, ¶465-70 (Perm. Ct. Arb., 2007) [hereinafter *Guy. v. Surin.*]; *Aegean Sea Continental Shelf (Greece v. Turk.)*, Interim Protection, 1976 I.C.J. 3, ¶30 (Sep. 11).

⁶² *Guy. and Surin.*, *supra* note 61, ¶470; UNCLOS, *supra* note 6, preamble.

⁶³ *Ghana/Côte d’Ivoire*, *supra* note 43, ¶¶631-32.

⁶⁴ *Maritime Delimitation in the Indian Ocean (Som. v. Kenya)*, Judgment, ¶207 (Oct. 12), <https://www.icj-cij.org/public/files/case-related/161/161-20211012-JUD-01-00-EN.pdf>.

PRAYER FOR RELIEF

Archang respectfully requests the Court to adjudge and declare that:

I) The Court has jurisdiction over this case and the claims by the State of Archang are admissible.

II) The delimitation of the continental shelf beyond 200 nautical miles between the State of Archang and the Republic of Rhotia in the Chelonia Trench area is to be effected on the basis of natural prolongation.

III) The Republic of Rhotia violated the United Nations Convention on the Law of the Sea by boarding the *Ocean Challenger* and initiating criminal proceedings against Ms. Kashee.

IV) The State of Archang did not violate the United Nations Convention on the Law of the Sea by allowing the *Ocean Challenger* to conduct marine scientific research.

Respectfully submitted on behalf of the Applicant