

国際法模擬裁判「2022年アジア・カップ」報告書

Asia Cup 2022

International Law Moot Court Competition



共催：国際法学会、外務省

後援：日本財団



このイベントは、海と日本 PROJECT の一環で実施しています

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1. 背景

(1) 概観

ここにいう模擬裁判は、あらかじめ出題されている架空の紛争事案について、参加者が、原告・被告の立場に分かれ、実際の裁判所に準じた手続に従い、書面陳述および口頭陳述を行い、その優劣を競う競技である。勝敗は、裁判官（審査員）の判定によって決定される。この模擬裁判大会は、欧米では、学生が日頃大学で学んでいる法律・法学が、実践の場においてどのように運営され活用されるのかを実体験から学ぶことができる有意義な教育手段と考えられている。日本においても、学部の演習、法科大学院や公共政策大学院の授業などにおいて実践的な法教育の一環として取り入れられてきている。

国際法模擬裁判は、国際法を素材とする模擬裁判であり、架空の国際紛争事案について、国際司法裁判所の手続に準じた一定の競技手続に従い、法的議論の優劣を競う模擬裁判である。国際法模擬裁判は、特定国家の国内法ではなく国際社会において一般に妥当すると考えられている国際法を素材として取り扱うため、国籍の異なる参加者が共通の土台の上で議論を展開できるという特性を有する。また、国際法に関する共通理解を培う場としても意義あるものである。このような国際法模擬裁判大会の性質から、大会には多数の国からの参加を得て、その大会には教育的効果はもちろん、国際親善・国際交流といった効果も期待することが出来る。実際、世界各国で開催されている国際法模擬裁判大会は、このような効果を狙って、様々な国からの参加を呼びかけ、開催されている。

日本では、法学教育はもっぱら講義が中心となってきたが、1979年に東京大学の学生が、アメリカで開催されている Philip C. Jessup 国際法模擬裁判大会（Philip C. Jessup International Law Moot Court Competition）に参加して以来、模擬裁判の存在が次第に知られるようになった。同大会には当初、東京大学だけが参加していたが、その後参加希望校が複数となったため、1986年より、国内予選を経て代表校を選出するようになった。また、1990年から、国内では、問題文・弁論とも日本語によるジャパン・カップが行われるようになっていたが、アジア・カップの開催に及んで、その国内予選ジャパン・ラウンドと位置付けられることになった。なお、後述するように、2013年より、アジア・カップとジャパン・カップはそれぞれが独立した大会として開催されることとなったため、現在は、ジャパン・カップを通じた国内選考は行われていない。

(2) 海外の状況

アメリカにおいて、毎年3～4月に開催される Philip C. Jessup 国際法模擬裁判 (Philip C. Jessup International Law Moot Court Competition) は、参加国・参加校も多く、最も知られた伝統のある大会である。ある時期まで米国国務省が主催していたが、現在ではワシントンに事務所を有する国際法学生協会 (International Law Students Association (ILSA)) が主催している。

ヨーロッパでは、1977年から開催され、国内予選を勝ち抜いた二十数校が参加しているテルダース国際法模擬裁判 (Telders International Law Moot Court Competition) が知られている。オランダのライデン大学に事務所があり、大会はオランダのヘーグ平和宮で行われている。

また、法分野を限定した大会としては WTO 法模擬裁判大会 (Moot Court Competition on WTO Law) が 1995 年から、欧州法学生協会 (ELSA) 主催でジュネーブ WTO センターにおいて行われている。また、マンフレッド・ラックス宇宙法模擬裁判大会 (The Manfred Lachs Space Law Moot Court Competition) が 1992 年から国際宇宙法学会 (IISL) の主催で行われている。これには、宇宙航空研究開発機構 (JAXA・旧宇宙開発事業団・NASDA) が資金援助を行い、日本でも、若干の大学がアジア太平洋予選に参加している。また、赤十字国際委員会の支援で、アジア地域では、香港国際人道法模擬裁判が行われるようになっており、2006 年から、ジャパン・カップの結果により、日本代表がこれに招待されることになっている (2008 年よりジャパン・ラウンドに「香港人道法模擬裁判代表選出手続」が設けられ、2010 年より同手続は「香港人道法模擬裁判代表推薦手続」へと改編された)。人権法分野の展開としては、2009 年から国際連合欧州本部にてネルソンマンデラ世界人権法模擬裁判 (The Nelson Mandela World Human Rights Moot Court Competition) が開催されている。また、海洋法分野に特化した模擬裁判として、2019 年からユトレヒト大学 (オランダ) の主催により、国際海洋法模擬裁判 (International Law of the Sea Moot Court Competition) が開催されている。

(3) 国内の状況

1979 年以来、日本の代表もほぼ毎年 Jessup 国際法模擬裁判に参加してきている。1984 年からは参加希望校が複数になり、国内予選によって代表の決定を行ってきた。この大会では、問題、書面、弁論のすべてにおいて英語が使われている。このような状況の中、国内において模擬裁判参加者の裾野を広げること、国際法意識の普及・浸透を計ること等を目的として、日本語で行われる大会の開催が望まれるようになった。こうして、1990 年から、日本語の規則・問題を独自に作成し、夏に国際法模擬裁判 (ジャパン・カップ)

が開催されるようになり、今日では Jessup 国際法模擬裁判の国内予選を上回る数の大学が参加するようになっている。なお、ジャパン・カップ、Jessup 国際法模擬裁判国内予選は、ほぼ毎年、外務省の後援や協力を得て開催されてきた。

こうして、1999 年にアジア・カップ国際法模擬裁判が開催された。この大会は、社団法人日本外交協会が、ジャパン・カップを運営する学生たちの協力を得て主催したものである。アジア・カップは、ASEAN 各国を中心に参加を呼びかけ、ジャパン・カップの問題、規則等の英語版を用いて行われた。この大会は 1999 年から 2001 年まで 3 度開催されたが、2002 年同協会の手を離れ、2003 年から 2012 年まで、国際人権・人道法の知識を普及させ、及び理解を増進させるとともに、有望なアジアの学生間に人的ネットワークを形成・拡充しながら、地域の人権意識の中長期的な向上を図ることを目的として、外務省（国際社会協力部人権人道課、現・総合外交政策局人権人道課）に引き継がれた。2013 年より、アジア・カップは国際法学会と外務省の共催となり、同学会内部の実行委員会が運営に参画することとなった。2014 年度以降、本大会を所管する外務省内の部署が同省国際法局国際法課へ、さらに、2016 年度以降、同局国際裁判対策室へと変更されたことに伴い、多数の現役外交官や国内外の法律実務家等を招へいし、国際大会の名に恥じない質・規模の裁判官陣を確保して大会を実施してきた。

21 回目のアジア・カップであった 2019 年には、参加登録校数が過去最多の 73 校（17 か国）にまで増えている。また、アジア・カップは従来、外務省内で行われていたが、予選ラウンドのみイイノホール&カンファレンスセンター（決勝ラウンドおよび表彰式・レセプションは外務省内）で開催した 2018 年の経験をふまえて、2019 年は決勝ラウンドもイイノホール&カンファレンスセンターで開催することにより、一般の方にも傍聴してもらうことができ、アジア・カップに対する一般の方の関心も高まっている。国内および海外における新型コロナウイルス感染症の状況に鑑みて、2020 年は開催を見送ったが、2021 年は、その間に行われるようになったさまざまなオンライン・イベントを参考にして、手探りながらオンラインで開催し、なお不確定な要素が多かった 2022 年もオンラインで開催することとした。

2. 国際法模擬裁判「2022年アジア・カップ」の意義

(1) 意義

「2022年アジア・カップ」の主要な意義として次の諸点が挙げられる。

a) 国際法に対する理解の増進

アジア地域の将来を担う同世代の学生らが、国際法をテーマとした設問に真剣に取り組み、国際法という共通の法言語によって討論を行うことで、国際法に関する意識を相互に高め、理解を深めることができる。

b) 「法の支配」の啓発

本模擬裁判大会に参加する大学の中には、参加者だけでなく、サークル単位で模擬裁判の準備を行う大学もある。模擬裁判大会を通じてより多くの学生が、国際法による紛争解決を学ぶ機会を持つことは、国際法を軸に据えた「法の支配」の啓発につながる。また、本大会を通じて、法的知識、論理的な思考を競い合い、国際法を学ぶ知的な喜びに触れた学生の中には、大学院に進学し、国際法の実務家あるいは研究者を目指す者も少なくない。本大会が、国際法そのものに対する啓発効果のみならず、将来の国際法学を担う若い人材に対して、国際法を深く学ぶための貴重なきっかけを提供している。

c) 日本理解の促進

各国から参加する学生は、大会に参加する日本人学生のみならず、大会の運営に関わる数多くの日本人学生と交流を深める機会を持つことができる。「2022年アジア・カップ」は2021年に引き続きオンラインで開催することになったため、参加学生が実際に日本を訪問し、体験することはかなわなかったが、日本の国際法学会と外務省が、日本財団の後援を得て、アジア・カップを共催してきていることは、参加者の間で十分に浸透しており、そのようなアジア・カップに参加するプロセスが、日本を理解していく上で、貴重な経験となっていることに変わりはない。

d) 将来への影響

大会に参加する各国代表は、それぞれの国における主要大学から参加しており、今後、東アジア、東南アジアおよび南アジアを含め世界的に広く活躍することが見込まれる。また、日本側から参加する学生の中にも将来、政府機関、法曹界、国際企業で活躍することになる学生が多く含まれている。将来、政治、外交、司法、ビジネスの各分野においてリーダーとして活躍することが見込まれる彼らが相互について理解を深めることは、将来にわたって日本とアジア地域諸国との関係に好影響をもたらすものと期待される。

(2) 実施体制

国際法学会と外務省が共催した「2022年アジア・カップ」では、以下のような体制の下で大会の準備・運営を行った。

a) 国際法学会内の実行委員会

国際法学会では、若手研究者育成委員会（2020年～2022年、委員長 都留康子（上智大学）、幹事 水島朋則（名古屋大学））が「2022年アジア・カップ」実行委員会を組織し、大会の実施にあたった。

b) 外務省国際法局

外務省国際法局では、御巫智洋国際法局長が決勝裁判官を務めるとともに、複数の職員が弁論裁判官を務めた。また、長沼善太郎国際裁判対策室長の下、同室職員が、国際法学会内の実行委員会と綿密な連携の下に、大会準備・運営にあたった。

外務省からは、国際法学会に対し、「2022年アジア・カップ」の運営業務一式として、総額1,000,000円が支払われた。これは優勝・準優勝チームへのトロフィーや全参加者への参加記念楯、裁判官謝金等にあてられた。また、決勝ラウンドおよび優勝チーム発表の後、御巫智洋国際法局長が、決勝ラウンドを戦った両チームのメンバーや傍聴者に向けて、アジアにおける法の支配の促進・強化の重要性について語った。

c) 日本財団からの助成

「2022年アジア・カップ」に対して、日本財団より助成金（総額5,700,000円）の交付を受けた。オンライン化に伴い、2019年大会までのような海外からの参加校への渡航費補助等の必要性はなくなったが、助成金の一部は、同様にオンラインで開催した2021年に引き続き、オンラインイベント・ライセンス契約料や学生アルバイト代等にあてられた。

d) 裁判官

国際法、国際関係一般に知見を有する有識者等が書面裁判官および弁論裁判官を務めた（具体的な名簿は後述のとおり）。国内外で幅広く活躍し多忙な状況にあるにもかかわらず、また、オンライン化に伴うさまざまな困難にもかかわらず、これらの方々からは、「2022年アジア・カップ」の意義にご理解をいただき、大切な時間を割いて惜しみない協力をいただいた。また、2021年に引き続き、過去のアジア・カップに関わってきた外国の方にも裁判官として協力してもらうことができた。このような形で今後もアジア・カップのネットワークが拡充されることを期待したい。なお、決勝裁判官は、植木俊哉東北大学理事・国際法学会代表理事、御巫智洋外務省国際法局長および石井由梨佳防衛大学校准教授が務めた。

e) 学生アルバイト

「アジア・カップ」および当初はその予選を兼ねていたジャパン・ラウンドの運営のための大学生による運営機関として、2004年に国際法学生交流会議（International Law Student Exchange Council (ILSEC)）が設立されている（2013年以降は、アジア・カップからは独立した「ジャパン・カップ」を運営）。「2022年アジア・カップ」では、ILSECのメンバーの学生に対して、その模擬裁判運営のノウハウを活かした協力をお願いした。オンライン化に伴い、これまで経験したことのない作業を含めて、当日までの諸々の準備を担当していただいたほか、当日は、廷吏やタイムキーパーとしてだけでなく、オンライン法廷の運営に関わるさまざまな業務を行っていただいた。

f) 参加登録校数について

本大会の開催に際しては、アジア各国の大学に対して広く参加を呼びかけた。その結果、26校（12か国）から参加登録があり、同じくオンラインで開催した昨年の31校（10か国）と比べると、国の数としては若干増えたものの全体の登録校数は減っている。また、昨年は複数校が登録した国が8か国あったのに対して今年は3か国しかなく（インドネシア=7、日本=6、フィリピン=4）、残る9か国はそれぞれ1校のみであった。これは、一方でアジア・カップの地理的な広がりへの定着を示すとともに、他方では、やはりオンラインのイベントに対して持続的に関心をもってもらうことの困難を示しているのかもしれない。

g) 決勝ラウンドの傍聴者

オンラインで開催する場合、世界のどこからでも傍聴することができるというメリットがある。決勝ラウンドについては、アジア・カップや国際法学会のホームページ等を通じて案内を行った結果、50人以上の傍聴者がいた。これに、後日、録画したものを視聴した外務省の新入省員等約80人（東京での対面開催の場合には会場で傍聴）を加えると、合わせて約130人が「2022年アジア・カップ」の決勝ラウンドを見たことになる。一般の傍聴者の中には、参加登録をして書面を提出したものの、残念ながら弁論大会には出場することができなかつたアジアの国々からの傍聴者も含まれていると考えられ、実地で開催すれば傍聴する機会が決してなかつた人たちにもこのような形でアジア・カップを実際に見てもらうことができたのは、今後のアジア・カップのネットワークの拡大・充実という観点からも、大きな意義があったと言える。もっとも、瞬間的に最多で100人以上の傍聴者がいた2021年大会と比べると、一般の傍聴者の数は減っており、このことは上述の参加登録校数の動向と合わせて、オンラインではなく対面でのアジア・カップの開催が求められていることを意味しているとも受け取ることができる。

3. 日程

- 2021年12月 問題文作成開始
- 2022年4月 公式スケジュール・公式規則・問題文発表
- 5月6日(金) クラリフィケーション申請〆切
- 5月27日(金) クラリフィケーション発表
- 6月1日(水) チーム登録開始
- 6月10日(金) チーム登録〆切
- 6月24日(金) 書面提出〆切
書面予備審査開始
- 7月18日(月) 書面予備審査通過／弁論大会出場チームの発表
書面審査開始
- 7月25日(月) 弁論大会登録〆切
- 8月5日(金) 弁論サマリー提出〆切
- 8月23日(火)～24日(水) 弁論大会：予選ラウンド
- 8月25日(木) 弁論大会：準決勝・決勝ラウンド

International Law Moot Court Competition *Asia Cup 2022*
Case Concerning the Chelonia Trench and the Ocean Challenger
(State of Archang/Republic of Rhotia)

1. The State of Archang (“Archang”) is a small island country located in the Nereus Sea. It is a developing country with a population of approximately 600,000 people. Archang is composed of a single island, the Island of Archang. The Island of Archang is the only landmass on a mid-ocean ridge known as the Nereus Ridge, which runs in a north-south direction in the middle of the Nereus Sea. Surrounded by the ocean, Archang’s economy is highly dependent on fisheries.
2. The Republic of Rhotia (“Rhotia”) is an industrialized country located on the eastern coast of the Allevantian continent, with a population of approximately 30 million people. It faces the Nereus Sea to the east and is approximately 550 nautical miles west of Archang. Although Rhotia’s economy had suffered from an economic depression in the mid-2010s, it is showing signs of recovery. Recent economic growth has been driven by new robotics and renewable energy technologies.
3. Archang and Rhotia face each other across the western part of the Nereus Sea. Between them lies a deep area of the ocean known as the Chelonia Trench, which runs in a direction parallel to the Nereus Ridge. The continental shelf of Archang gradually slopes down towards the Chelonia Trench. The continental shelf of Rhotia gradually descends to a point slightly beyond 200 nautical miles from the coast and then sinks steeply into the trench. The shortest distance to the Chelonia Trench is 330 nautical miles for Archang and 220 nautical miles for Rhotia. The Chelonia Trench represents the dividing line between two distinct parts of the continental shelf, geologically and geomorphologically.
4. Archang and Rhotia ratified the United Nations Convention on the Law of the Sea (UNCLOS) in December 1988 and June 1992, respectively. Both States then started to conduct surveys in areas beyond 200 nautical miles from their coast to collect information about their continental shelves. In the mid-1990s, both states realized that their claims to continental shelves beyond 200 nautical miles might overlap. However, apart from a few cases where concerns were expressed against unilateral survey activities conducted by the other side, no specific

actions were taken. No consultations were held between the two States on this matter.

5. In March 2009, Archang submitted information regarding its continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf (hereinafter, CLCS) in accordance with Article 76(8) of UNCLOS. The submission by Archang included the area around the Chelonia Trench and overlapped with the area to be covered by the submission of Rhotia, which was under preparation. Rhotia immediately sent a *note verbale* to the United Nations Secretary-General, informing the CLCS of the existence of a maritime boundary dispute and requesting it not to consider the submission of Archang, in accordance with Paragraph 5(a), Annex I of the CLCS's Rules of Procedure. Rhotia filed its own submission to the CLCS next April. In response, Archang sent a *note verbale* similar to that of Rhotia requesting the CLCS not to consider Rhotia's submission.
6. Both Archang and Rhotia's submission to the CLCS establishes the outer edge of the continental margin solely by using the formula under Article 76(4)(a)(ii) of UNCLOS, connecting points not more than 60 nautical miles from the foot of the continental shelf. Their submissions overlap in a narrow belt over and around the Chelonia Trench, which runs in a north-south direction and is about 40 nautical miles wide where it is the widest ("the Chelonia Trench area"). The limits of the continental shelf, according to Archang's submission, run close to the limits of Rhotia's exclusive economic zone (EEZ) but are entirely outside it.
7. In August 2012, the Ocean University of Archang, a private university in Archang, announced that its researchers conducted a research cruise in the Chelonia Trench area and found numerous hydrothermal vents on the seabed. According to a press release by the university, the vents are home to various marine creatures and might be rich in mineral resources such as copper, lead and zinc. It was noted that further research would be required to fully understand the ecosystem around the vents. After the research finding was reported in the news, Rhotia lodged a protest against Archang, pointing out that the research activity was conducted without the consent of Rhotia.
8. In January 2013, Archang and Rhotia entered into consultations regarding the Chelonia Trench area. The two States could not reach an agreement on the regulation of marine scientific research in the area, with Archang adopting the position that both sides should be allowed to conduct research freely and Rhotia taking the view that consent of both States should be required to avoid any

issues. However, they agreed to continue consultations, based on the understanding that a final resolution of their issues would require the Chelonia Trench area to be delimited. In the talks held in August 2013, the two States agreed that a solution would have to be found without waiting for the CLCS recommendations, since considerable time would be required for the CLCS to consider their submissions even if they agreed to retract their *notes verbales*. Eight rounds of consultations were subsequently held until 2019. However, an agreement could not be reached on how to delimit the overlapping claims to the continental shelf.

9. In August 2019, a press release outlining the following points was made public on the websites of the foreign ministries of Archang and Rhotia.
 - Both sides have reached an agreement that their continental shelves need to be delimited. It was also agreed that the area to be delimited is the area of overlap between the areas indicated in the submissions to the CLCS, commonly referred to as the Chelonia Trench area.
 - While both sides continued to consult with each other for a prolonged period of time from 2013 to 2019, an agreement could not be reached on how to delimit the overlapping maritime area. Archang takes the position that the area should be delimited based on natural prolongation. Rhotia takes the position that the area should be equally divided. It has been agreed that the only disagreement between the two sides is on the maritime delimitation method. There is agreement that there are no other circumstances that should be taken into account in delimiting the maritime boundary.
 - Both sides have agreed that further progress on the issue of maritime boundary delimitation through negotiation is unrealistic. Based on such an understanding, it was agreed in principle that the issue would be referred to the International Court of Justice (ICJ). Further consultations will be promptly conducted in order to decide on the modalities for this step by agreement.
 - Both sides will retract their *notes verbales* regarding each other's submissions to the CLCS after a final agreement has been reached on the referral of the issue to the ICJ.
10. In December 2019, a change of government took place in Rhotia as a result of an election. In the new government, some key political figures started to oppose the decision to bring the maritime boundary issue to the ICJ and instead argued

that more steps should be taken to protect Rhotia's interests in the Chelonia Trench area. As a result of this shift in Rhotia's foreign policy, consultations concerning the referral of a case to the ICJ were put on hold. In June 2020, Rhotia established a marine protected area (MPA) to protect the biodiversity around hydrothermal vents in the Chelonia Trench area (The Chelonia Trench MPA), based on Rhotia's Act on Protection of the Marine Environment (APME) that applies to its EEZ and continental shelf. The Chelonia Trench MPA is established for the entire area covered by Rhotia's CLCS submission and includes the area covered by Archang's submission. For MPAs established on the seabed, APME prohibits the disturbance of the maritime environment by mineral resource development activities, marine scientific research, bottom-sea trawling and the construction of submarine pipelines. Fines are imposed on those who conduct prohibited activities in an MPA. The prohibition applies to all activities in the MPA, regardless of the nationality of the ship or the person involved. Archang protested against Rhotia, claiming that the establishment of the Chelonia Trench MPA violates its rights and is inconsistent with international law, including UNCLOS. In its protest, Archang emphasized that neither of the two States has the right to prohibit activities such as marine scientific research, which can be conducted without causing detriment to each other's rights, until the maritime boundary is delimited. Archang also called on Rhotia to resume consultations, but Rhotia failed to respond.

11. While tensions mounted between Archang and Rhotia, it was reported in the news that the Ocean University of Archang was planning a research cruise in March 2021 to study the ecosystem around hydrothermal vents in the Chelonia Trench area. In planning the cruise, the university sent letters to the Ministry of Science of Education and the Ministry of Foreign Affairs of Archang requesting their views on any possible issues with their plan. The two ministries replied in a joint document stating that: "We are not in a position to request specific actions with regard to your research cruise plan unless an application for consent to conduct marine scientific research is made to Rhotia." Based on this reply, the university decided to send its research vessel, the *Ocean Challenger* (flagged to Archang), to the Chelonia Trench area as originally planned.
12. The Rhotian authorities became aware of the planned cruise through news reports and issued the following statement: "Our consent is required for all marine scientific research activities taking place on our continental shelf, in accordance with UNCLOS. Even considering Archang's maritime claims,

unilaterally conducted research activities are a clear violation of applicable rules of international law. Undertaking such actions will only aggravate the dispute concerning the Chelonia Trench. We strongly urge the Ocean University of Archang to reconsider its plans and demand that Archang stop the research vessel from leaving its port.”

13. Soon after Rhotia issued its statement on the research cruise plan, a group of indigenous peoples residing in Rhotia, known as the Chelonis, made a request to the Ocean University of Archang to postpone the research cruise until after May 2021. The Chelonis expressed their concerns that noise from the research activities may drive away sea turtles known to migrate through the area in March. The Chelonis consider themselves decedents of people who migrated from another continent across the Nereus Sea to the west coast of the Allevantian continent. According to their legend, when their ancestors were struggling in their long travel across the ocean, a giant sea turtle appeared from the “deepest area of the ocean” and guided them to the coast of what is currently Rhotia. Based on this legend, the Chelonis head to the waters above the Chelonia Trench every year in March and give their offerings to the sea turtles. This is an important religious and cultural event for the Chelonis tied to their identity as a people. It is also a way of preserving their traditional knowledge regarding navigation, which has allowed the Chelonis to travel vast distances at sea.
14. The Ocean University of Archang held meetings with the leaders of the Chelonis and considered whether some adjustments to the research plan, such as reducing the area of research, would make the project acceptable to the Chelonis. However, the Chelonis insisted that the research cruise be postponed. In the end, the university officially responded that it could not accommodate the request. The university indicated that it did not see any reason to change the plan since scientific studies show that the impact of the research activity on marine life is limited. The Chelonis subsequently sought an injunction from a court in Archang. The court denied the request, stating that “the right of the Cheloni people to conduct traditional rituals is not protected under the laws of Archang.” In the injunction hearing, both the university and the Chelonis submitted the views of experts on the matter. The expert opinion submitted by the university considered that the impact of the research activity, if any, would be limited in scope. The expert for the Chelonis disagreed, suggesting that the possibility of there being an impact on migratory patterns of sea turtles cannot be ruled out.
15. On March 8th, 2021, the *Ocean Challenger* arrived at the Chelonia Trench area

as planned and commenced its activities. A number of autonomous underwater vehicles (AUVs) were deployed to take videos of marine life around hydrothermal vents and to collect samples. The *Ocean Challenger* also conducted seismic surveys to collect information about the geology of the area. Three days after the start of research activities, a patrol vessel of the Rhotia coast guard approached the *Ocean Challenger* and issued warnings that “unauthorized marine scientific research on our continental shelf cannot be accepted. You must leave the area immediately.” On the same day, the Rhotian Foreign Ministry summoned the Ambassador of Archang to Rhotia and demanded that the *Ocean Challenger* cease all activities and return to its port in Archang.

16. Ms. Kashee, the captain of the *Ocean Challenger*, responded to the warning issued by the Rhotia coast guard by collecting all AUVs from the ocean and suspending all research activities. Ms. Kashee informed the patrol vessel via radio that she had suspended all research activities and that the *Ocean Challenger* would remain at its current location to await instructions from the university. The patrol vessel did not respond and continued to repeat its warning to leave the area.
17. In the early hours of the next day, on March 11th, several Rhotia coast guard officers sent from the patrol vessel by a boat boarded the *Ocean Challenger*. The officers required the crew of the *Ocean Challenger* to submit documents and materials related to research activities conducted from March 8th to 10th, which were later seized. Ms. Kashee protested against the actions taken by the officers but was compelled to comply as the officers were armed. The officers eventually returned to the patrol vessel after warning Ms. Kashee once again to leave the area. The *Ocean Challenger* subsequently left the site following instructions received from the university.
18. In August 2021, Ms. Kashee was indicted before a criminal court in Rhotia for violating the APME and the Foreign Marine Scientific Research Regulation Act (FMSRRA). According to the FMSRRA, consent from the Rhotian authorities is required for a foreign vessel to conduct marine scientific research on the continental shelf or in the EEZ of Rhotia. The Act provides fines as penalties for those who conduct marine scientific research without consent. It also authorizes coast guard officers to conduct inspections against foreign vessels when there is a suspicion of unauthorized research and seize the vessel if the suspicion proves to be justified by evidence.
19. On April 6th, 2022, the Ambassador of Archang to the Netherlands submitted an

Application against Rhotia to the ICJ. In the application, Archang invoked the declarations of Archang and Rhotia under Article 36(2) of the Statute of the ICJ as the basis of jurisdiction. Rhotia is disputing the jurisdiction of the ICJ over the dispute and the admissibility of Archang's claims, but both parties have agreed to deal with the issue together with the merits. Both parties are members of the United Nations and States parties to UNCLOS, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on Biological Diversity and the Vienna Convention on the Law of Treaties.

20. When Rhotia ratified UNCLOS, it made a declaration under Article 287 in writing, indicating that it would accept the International Tribunal for the Law of the Sea and an arbitral tribunal constituted under Annex VII without any preference for one over the other. In 2000, Rhotia made a declaration under Article 36(2) of the Statute of the ICJ recognizing the jurisdiction of the court as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation. Rhotia's optional clause declaration contains a reservation excluding "disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method or methods of settlement" from the scope of the declaration. Archang made a declaration under Article 36(2) of the Statute of the ICJ in 1980 without any reservations. Archang has not made a declaration under Article 287 of UNCLOS.

21. Prayers for relief of each party are as follows:

- a. The State of Archang respectfully requests the Court to adjudge and declare that:
 - i The Court has jurisdiction over this case and that 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 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.

b. The Republic of Rhotia respectfully requests the Court to adjudge and declare that:

i The Court does not have jurisdiction over this case and that the claims by the State of Archang are inadmissible.

Or, in the alternative, that:

ii The delimitation of the continental shelf beyond 200 nautical miles between the Republic of Rhotia and the State of Archang is to be effected by an equal division of the area.

iii The Republic of Rhotia did not violate 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 violated the United Nations Convention on the Law of the Sea by allowing the *Ocean Challenger* to conduct marine scientific research.

International Law Moot Court Competition Asia Cup 2022
Corrections and Clarifications

The Parties of the Case Concerning the Chelonia Trench and the Ocean Challenger have jointly submitted the following corrections and clarifications to the Registrar of the Court. Attached to this document are two maps that reflect the Parties' agreed understanding of their claims in the Nereus Sea and the specific location of an event relevant to the dispute. The corrections and clarifications form an integral part of the Asia Cup 2022 Problem, which is amended and elaborated accordingly. Requests for questions not answered in this document were considered by the Parties as redundant, irrelevant, or too general, or the Parties were unable to agree upon an answer to them.

Corrections

1. Insert "in the Chelonia Trench area" after "the Republic of Rhotia" in paragraph 21(a)(ii) and "the State of Archang" in paragraph 21(b)(ii).
2. Replace "foot of the continental shelf" with "foot of the slope" in the first sentence of paragraph 6.

Clarifications

1. The term "Chelonia Trench area" is used to refer to the area where the continental shelf claims of Archang and Rhotia overlap, including the superjacent waters of the continental shelf. The Chelonia Trench area is the only area where the maritime entitlements of Archang and Rhotia could overlap.
2. There are two 2500m isobath lines on both sides of the deepest part of the Chelonia Trench, running in parallel to the trench.
3. Archang's domestic legislation does not require scientists or research institutions in Archang to apply for government approval before conducting scientific research activities in waters under its jurisdiction. Although the Archang coast guard keeps track of all vessel traffic in Archang waters, the government was not actively aware of the research cruise in 2012 before its results were reported.
4. In response to Rhotia's protest in August 2012, Archang refuted the protest by stating that it also has claims to the area and that the area's status as an undelimited maritime area should not hinder research for research the advancement of scientific knowledge.

5. During its activities starting from March 8, 2021, the *Ocean Challenger* was within the Chelonia Trench area until it returned to its port.
6. Ms. Kashee's communication by radio was received by the Rhotia coast guard. However, the patrol vessel chose not to respond because its orders had not been complied with.
7. In its prayer for relief, Archang is requesting the Court to adjudge and declare the method of delimitation to be applied in the Chelonia Trench area and is not asking the Court to determine the course of the boundary.
8. In its prayer for relief, Rhotia is requesting the Court to adjudge and declare that the appropriate method for delimiting the Chelonia Trench area is to draw a maritime boundary that would result in the apportionment of equal areas between Rhotia and Archang.

Case Concerning the Chelonia Trench
and the Ocean Challenger
(State of Archang/Republic of Rhotia)

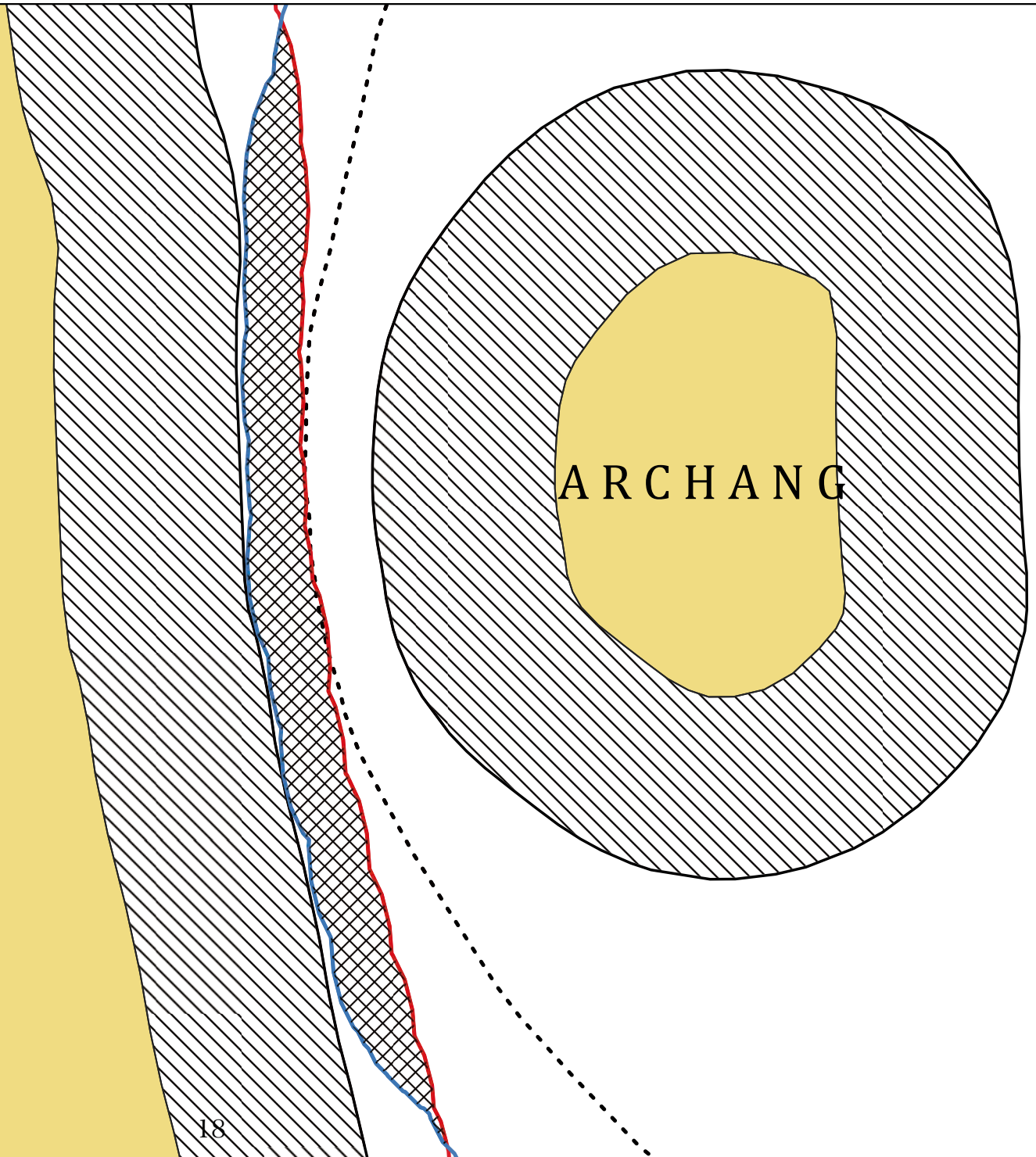
Map 1

The maritime claims of
Archang and Rhotia

R H O T I A

Legend

- Outer limits of the continental shelf based on submissions of Archang to the CLCS
- Outer limits of the continental shelf based on submissions of Rhotia to the CLCS
- ▨ Exclusive Economic Zones
- - - Equidistance line between Archang and Rhotia
- ⊗ Chelonia Trench area



Case Concerning the Chelonia Trench
and the Ocean Challenger
(State of Archang/Republic of Rhotia)

Map 2

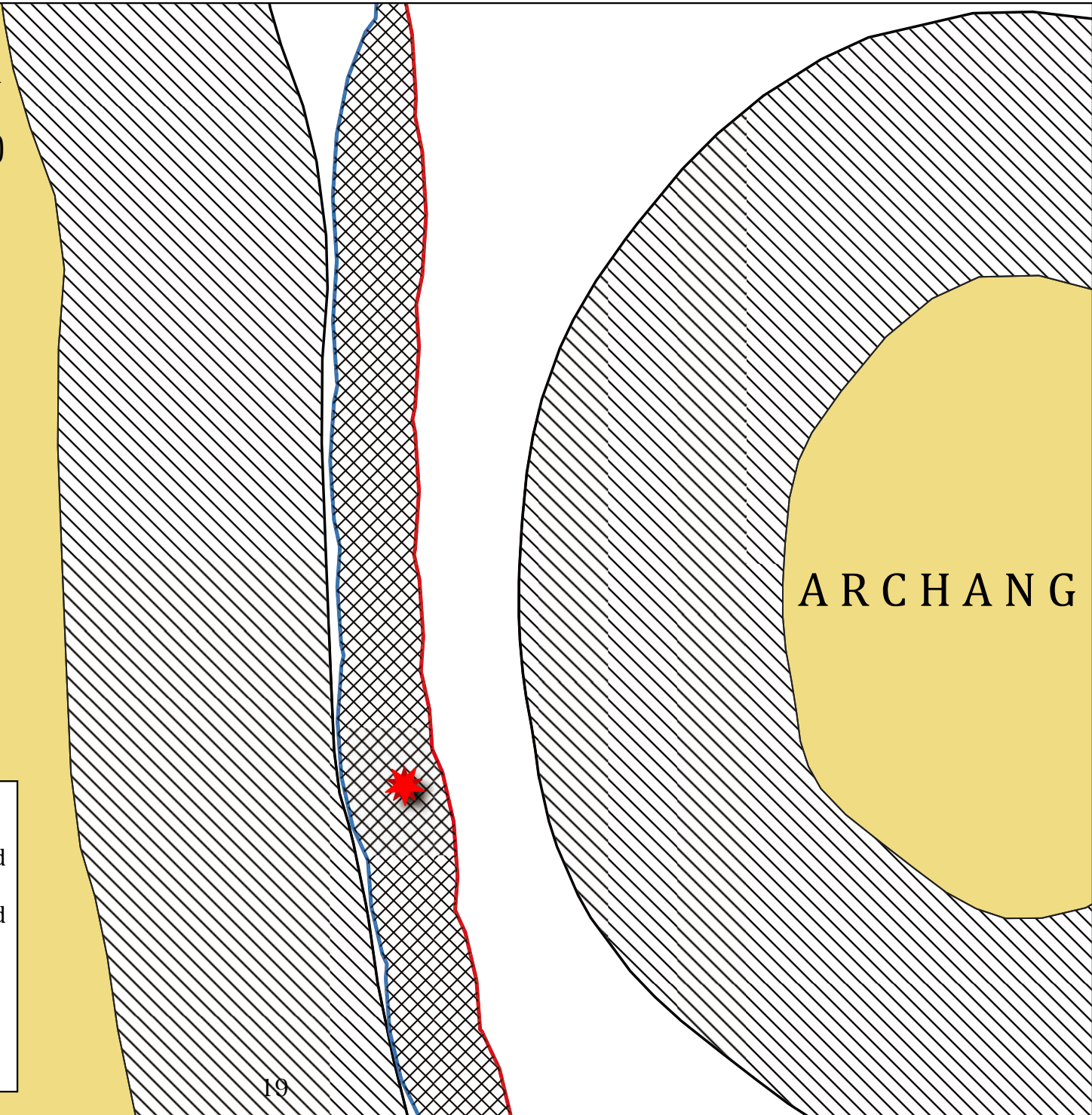
Location of the Ocean Challenger
at the time of its boarding

R H O T I A

ARCHANG

Legend

- Outer limits of the continental shelf based on submission of Archang to the CLCS
- Outer limits of the continental shelf based on submission of Rhotia to the CLCS
- ▨ Exclusive Economic Zones
- ▣ Chelonia Trench Area
- ★ Location of the Ocean Challenger at the time of its boarding



International Law Moot Court Competition, “Asia Cup 2022”

*Co-hosted by
Japanese Society of International Law
&
Ministry of Foreign Affairs of Japan*

*Financially Supported by
The Nippon Foundation*

Official Rules

April 2022
Asia Cup 2022 Organizing Committee

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Chapter I GENERAL RULES

Article 1 Purpose

The International Law Moot Court Competition, “Asia Cup 2022”, is co-hosted by the Japanese Society of International Law and the Ministry of Foreign Affairs of Japan and administered by the Asia Cup 2022 Organizing Committee. The purpose of Asia Cup 2022 is to raise awareness regarding international law and the rule of law among students in Asia through academic exchange. It is hoped that Asia Cup 2022 will foster friendship among Asian students.

Article 2 Structure

Asia Cup 2022 consists of written pleadings (Memorials) and oral pleadings (Oral Rounds).

Article 3 Official Language and Venue

(1) The official language of Asia Cup 2022 is English.

(2) Asia Cup 2022 is held online.

Article 4 Competition Problem

The Organizing Committee publishes the Competition Problem of Asia Cup 2022.

Article 5 Corrections and Clarifications

A request for corrections and clarifications to the Competition Problem may be sent by email to the Organizing Committee: asiacupmoot@gmail.com by the deadline in the Official Schedule. Corrections and Clarifications to the Competition Problem will be published by the date in the Official Schedule.

Article 6 Detailed Regulations

The Organizing Committee may add detailed regulations including those relating to online moots if they are deemed necessary.

Article 7 Interpretation of Rules

The Organizing Committee shall serve as final arbiter of implementation and interpretation of the Rules and regulations.

Chapter II PARTICIPATION AND ELIGIBILITY

Article 8 Team Eligibility and Composition

(1) Each school in Asia may enter one team. A school may petition the Organizing Committee, in writing, to allow the participation of multiple teams from the school. Additional teams may be allowed if the teams represent different colleges, faculties, branches, departments, or campuses of the same school and will be participating independently of each other.

(2) A team may be composed of two to four team members who shall be the only individuals contributing to the work product of the team in Asia Cup 2022. Conducting research for a team's written and/or oral arguments, writing any part of a team's Memorial, and presenting any of a team's oral arguments are examples of activities that contribute to a team's work product.

(3) Team members may be chosen by any method within the school.

Article 9 Team Member Eligibility

(1) A team member must be officially enrolled as an undergraduate student in a university or equivalent program. An undergraduate student who graduated from the university after the team submitted a Memorial for Applicant may act as an oralist in the Oral Rounds.

(2) A student enrolled in a graduate degree program in the field of international law, an undergraduate student who has previously graduated from a university with a law degree, and an individual who has worked as a legal professional may not be a team member.

Chapter III TEAM REGISTRATION

Article 10 Registration

(1) Every team must register with the Organizing Committee online at <https://www.asiacup.sakura.ne.jp> by the deadline in the Official Schedule.

(2) Every student who contributes to the work product of the team must be registered as a team member.

Article 11 Team Number

Once a team has completed registration, the Organizing Committee will assign the team a team number.

Article 12 Changes of Team Members

Once team members are registered, teams may not make changes, whether additions or substitutions, of team members, without permission from the Organizing Committee. Any request to make a change must be submitted to the Organizing Committee with an explanation of the reason for the requested change.

Chapter IV MEMORIAL

Article 13 Submission of Memorial

(1) Each team shall electronically submit a Memorial for Applicant to the Organizing Committee by the deadline in the Official Schedule.

(2) Unless otherwise agreed in advance and in writing by the Organizing Committee, a team will be disqualified from Asia Cup 2022 if it does not submit its Applicant Memorial by the deadline.

Article 14 Memorial Formatting

(1) File Type: An Applicant Memorial must be in Microsoft Word format.

(2) Paper Size/Margins: The Memorial must be typed in black on white international standard A4 paper (21 x 29.75 centimeters), with margins of not less than 1 inch or 2.6 centimeters on all four sides.

(3) Font, Font Size and Line Spacing: The font and size of the text of the Memorial, excluding the Cover Page and page numbers but including footnotes, must be in either Times New Roman 12-point or Courier 10-point. The line spacing for the Memorial must be double-spaced, with the exception of footnotes.

Article 15 Memorial Content

(1) The Memorial must consist of the following parts and be saved in a single file.

(i) Cover Page, which must include a statement indicating that what follows is the Memorial for Asia Cup 2022 and the team number in the upper right-hand corner;

(ii) Table of Contents;

(iii) Summary of Pleadings, which must not exceed 2 pages;

(iv) Pleadings, which must not exceed 10 pages, including footnotes; and

(v) Conclusion/Prayer for Relief

(2) Parts not enumerated in paragraph 1 should not be contained.

Article 16 Anonymity in Memorial

Names of team members, and the country or school name of the team, may not appear on or within the Memorial, even by implication.

Chapter V TEAMS PARTICIPATING IN ORAL ROUNDS

Article 17 Qualifying Teams

(1) The Organizing Committee will select teams participating in the Oral Rounds of Asia Cup 2022 on the basis of the preliminary Memorial examination. In principle, one team from each Asian country other than Japan and one or two teams from Japan may participate in the Oral Rounds.

(2) In the preliminary Memorial examination, the evaluation criteria provided in Article 31 will be utilized.

(3) The Organizing Committee will inform all teams of the outcome of the preliminary Memorial examination, but no information about the score or ranking in this examination will be given.

Article 18 Team Registration for Oral Rounds

Each member of the teams qualified for the Oral Rounds must submit an official document which certifies that he/she meets the requirements provided in Article 9, by the deadline which will be announced by the Organizing Committee.

Article 19 Observers

(1) Persons other than those registered in accordance with Article 10 are regarded as observers, subject to an approval by the Organizing Committee.

(2) Observers may not act as an oralist at the Oral Rounds.

Article 20 Summary of Oral Pleadings

Each team participating in the Oral Rounds must submit a Summary of Oral Pleadings both for Applicant and for Respondent by the deadline which will be announced by the Organizing Committee.

Chapter VI ORAL ROUND PROCEDURES

Article 21 General Procedures

(1) Each Oral Round consists of 60 minutes of oral pleadings. Applicant and Respondent are each allotted 30 minutes. Oral presentations must be made by two members from each team. Prior to the beginning of the Round, each team must indicate to the bailiff how it wishes to allocate 30 minutes among (a) its first oralist, (b) its second oralist, and (c) rebuttal (for Applicant) or sur-rebuttal (for Respondent). The team may not allocate more than 20 minutes, including rebuttal or sur-rebuttal, to either oralist. Any team member may act as an oralist.

(2) Judges may, at their discretion, extend total team oral argument time beyond the 30-minute allocation, and oralists asked by the judges to expand upon arguments may, in this instance, exceed the 20-minute individual limit.

Article 22 Three Judge Panels

In each Oral Round, the Organizing Committee should in principle employ three judges whenever possible, and may employ more than three judges in each of the Semifinal Rounds and the Final Round. In extenuating circumstances, the Organizing Committee may authorize panels of two judges.

Article 23 Order of Pleadings

The order of the pleadings in each Oral Round is:

Applicant 1 → Applicant 2 → Respondent 1 → Respondent 2 → Rebuttal (Applicant 1 or 2) → Sur-rebuttal (Respondent 1 or 2).

Article 24 Rebuttal and Sur-rebuttal

Each team may reserve up to five minutes for rebuttal or sur-rebuttal. Only one of the two oralists participating in the Oral Round may deliver the rebuttal or sur-rebuttal, but the team need not indicate in advance which of the pleading team members will do so. Teams may waive their rebuttal or sur-rebuttal.

Article 25 Scope of Pleadings

(1) Oral pleadings at each Oral Round should in principle be made on the basis of Memorials and Summaries of Oral Pleadings of each team.

(2) The scope of Applicant's rebuttal is limited to responding to Respondent's primary oral pleadings, and the scope of Respondent's sur-rebuttal is limited to responding to Applicant's rebuttal. If Applicant waives rebuttal, Respondent's sur-rebuttal is automatically waived as well.

(3) Oral judges may take into account any non-compliance with this principle in evaluating an oralist's performance.

Article 26 Preliminary Rounds

Each team participating in the Oral Rounds shall participate in Preliminary Rounds consisting of two Oral Rounds, once as Applicant and once as Respondent.

Article 27 Pairing

(1) The pairing of teams for Preliminary Rounds shall be done by a random draw. The Organizing Committee will distribute to each team the Memorials and Summaries of Oral Pleadings of opposing teams on or prior to the first day of the Oral Rounds.

(2) The Organizing Committee may modify the pairing to account for absent teams or other unforeseeable contingencies. If teams must be newly paired, they must be provided the Memorial and Summary of Oral Pleadings of their new opposing team as soon as reasonably possible.

Article 28 Preliminary Round Rankings

(1) Teams shall be ranked by Total Asia Cup Scores provided in Article 33, paragraph 4, from highest to lowest.

(2) If two or more teams are tied after application of paragraph 1 of the present Article, and the outcome of determination does not affect (a) any team's entry into the Semifinal Rounds, or (b) the pairing of any teams in the Semifinal Rounds, the teams shall be ranked equally. If, however, further determination is necessary to determine advancement or pairings, the Organizing Committee shall break the tie according to the following methods, starting with the first and working down only if the prior method does not break the tie:

(i) the team with the higher Total Oral Score wins;

(ii) the team with the higher Respondent Oral Score wins; or

(iii) the Organizing Committee determines a method to break the tie, taking into account the interests of the teams and Asia Cup 2022 as a whole.

Article 29 Semifinal Rounds

(1) The Semifinal Rounds consist of two pairings of the four highest-ranked teams in accordance with Article 28.

(2) The pairings in the Semifinal Rounds shall be determined as follows: the first-ranked team versus the fourth-ranked team; and the second-ranked team versus the third-ranked team.

(3) In each Semifinal Round, the higher-ranked team shall have the pleading option, or the right to choose which side it will argue.

Article 30 Final Round

(1) The two winning teams from the Semifinal Rounds advance to the Final Round of Asia Cup 2022.

(2) The pleading option for the Final Round shall be determined by drawing lots or any other means the Organizing Committee chooses.

Chapter VIII Competition Scoring

Article 31 Scoring of Memorials

Each judge will score each Memorial on a scale of 50 to 100 points. A Memorial judge may utilize the following evaluation criteria.

- (i) Knowledge of facts and law
- (ii) Proper and articulate analysis
- (iii) Extent and use of research
- (iv) Clarity and organization
- (v) Style, grammar, and citation of sources

Article 32 Scoring of Preliminary Rounds

Each judge will score each oralist on a scale of 50 to 100 points. An Oral judge may utilize the following evaluation criteria.

- (i) Knowledge of the law
- (ii) Questions and answers
- (iii) Knowledge of the facts
- (iv) Style, pose and demeanor
- (v) Organization and time management

Article 33 Scores

The calculation of scores shall be subject to the deduction of Penalties under Chapter IX.

(1) Each team's Total Memorial Score is the sum of the three Memorial judges' scores. This score shall be used to determine the Best Memorial Award.

(2) Each oralist's Individual Oral Score is the sum of the scores of the three Oral judges for the oralist in the Preliminary Rounds. This score shall be used to determine the Best Oralist Awards

(3) Each team's Total Oral Score is the sum of the scores of the three Oral judges for each of its four oralists in the Preliminary Rounds.

(i) Each team's Applicant Oral Score is the sum of the scores of the three Oral judges for each of its two oralists arguing Applicant.

(ii) Each team's Respondent Oral Score is the sum of the scores of the three Oral judges for each of its two oralists arguing Respondent.

(4) Each team's Total Asia Cup Score is the sum of the team's Total Memorial Score and the team's Total Oral Score.

Article 34 Two-Judge Panels

If only two judges score a given Memorial or a given Oral Round, the Organizing Committee shall create a third score by averaging the scores of the two judges.

Article 35 Scoring Procedures for Semifinal and Final Rounds

Judges of the Semifinal and Final Rounds shall make an independent review of the oral arguments. The decision regarding the winner of the Round shall be by majority vote of the judges. No ties are allowed.

CHAPTER IX PENALTIES

Article 36 Memorial Penalties

- (1) Memorial Penalties shall be deducted from each judge's score on a team's Memorial.
- (2) Penalties shall be assessed for violations of the Rules concerning Memorial as follows.
 - (i) Failure to include all parts of Memorial (Article 15): 5 points for each part
 - (ii) Excessive length of Summary of Pleadings (Article 15(1)(iii)): 5 points per page
 - (iii) Excessive length of Pleadings (Article 15(1)(iv)): 5 points per page
 - (iv) Violation of anonymity in Memorial (Article 16): disqualification or up to 10 points

Article 37 Oral Round Penalties

- (1) Oral Round Penalties shall be deducted from each judge's score for each oralist.
- (2) The Organizing Committee may assess up to 10-point penalties for violations of the letter or spirit of the Rules including tardiness in submitting a Summary of Oral Pleadings (Article 20).

CHAPTER X AWARDS

Article 38 The Asia Cup Championship Award

The Asia Cup Championship Award is presented to the team that wins the Final Round of Asia Cup 2022.

Article 39 The Best Memorial Award

The Best Memorial Award is presented to the team with the highest Total Memorial Score.

Article 40 The Best Oralist Awards

- (1) The Best Applicant Oralist Award is presented to the oralist with the highest Individual Oral Score among the oralists arguing Applicant.
- (2) The Best Respondent Oralist Award is presented to the oralist with the highest Individual Oral Score among the oralists arguing Respondent.

5. 裁判官

(1) 書面・弁論裁判官（決勝ラウンドを除く）（50音順、敬称略）

浅野ゆりな（一橋大学法科大学院）
ト部晃史（瓜生・糸賀法律事務所）
喜多康夫（帝京大学）
河本麻由美（法務省）
坂口研（外務省）
坂巻静佳（静岡県立大学、アジア・カップ実行委員）
坂本友希（外務省）
澤田聡子（外務省）
瀬田真（横浜市立大学）
高田陽奈子（大阪大学）
竹内真理（神戸大学）
張博一（小樽商科大学）
鶴田順（明治学院大学）
天神毅（ENEOS ホールディングス）
徳永実希（東京大学大学院）
長澤宏（早稲田大学大学院）
中島啓（東京大学）
西本健太郎（東北大学、アジア・カップ実行委員）
二杉健斗（大阪大学）
根岸陽太（西南学院大学、アジア・カップ実行委員）
樋口恵佳（東北公益文科大学、アジア・カップ実行委員）
藤井麻衣（笹川平和財団）
前田基寛（スリークラウンズ法律事務所）
松田浩道（国際基督教大学、アジア・カップ実行委員）
マンスフィールド・デビッド宥雅（国際刑事裁判所）
水野雄介（西村あさひ法律事務所）
三好想（法務省）
村上友太（京都大学大学院）
森下裕香（外務省）
山下朋子（愛知県立大学）

若狭彰室（東京経済大学）

渡辺翔太（野村総合研究所）

渡邊剛央（岡山理科大学）

DANY Channraksmeychhoukroth（Royal University of Law and Economics, Cambodia）

(2) 決勝ラウンド裁判官 （50音順、敬称略）

石井由梨佳（防衛大学校）

植木俊哉（東北大学、国際法学会代表理事）

御巫智洋（外務省国際法局長）

6. 弁論ラウンド参加チームと参加メンバー

Asia Cup 2022: 10 qualifying teams which advanced to the Oral Rounds

Team Number	Team
AC 202	Sri Lanka Law College (Sri Lanka), which was unable to compete in the Oral Rounds due to unavoidable circumstances.
AC 203	Diplomatic Academy of Vietnam (Viet Nam)
AC 208	Kyoto University (Japan)
AC 213	Purbanchal University, Kathmandu School of Law (Nepal)
AC 217	University of the Philippines (Philippines)
AC 218	Thammasat University (Thailand)
AC 219	Ritsumeikan Asia Pacific University (Japan)
AC 220	Universitas Sebelas Maret (Indonesia)
AC 222	Singapore Management University (Singapore)
AC 223	University of Malaya (Malaysia)

Asia Cup International Law Moot Court Competition 2022

co-hosted by
Japanese Society of International Law
and
Ministry of Foreign Affairs of Japan
held 23-25 August 2022 online

Certificate of Participation

The Organizing Committee of the Asia Cup International Law Moot Court Competition 2022 hereby certifies that the following individuals are members of the teams which participated in the oral rounds of the Competition.

29 August 2022

Manul Rajapaksha	Sri Lanka Law College, Sri Lanka
Minul Muhandiramge	Sri Lanka Law College, Sri Lanka
Yasara Kodagoda	Sri Lanka Law College, Sri Lanka
Dinusha Pathirana	Sri Lanka Law College, Sri Lanka
Nguyen Bui Hong Minh	Diplomatic Academy of Vietnam, Viet Nam
Nguyen Ngoc Ngan	Diplomatic Academy of Vietnam, Viet Nam
Pham Dao Mai Phuong	Diplomatic Academy of Vietnam, Viet Nam
Vu Thi Mai Ngan	Diplomatic Academy of Vietnam, Viet Nam
Riona Kato	Kyoto University, Japan
Emiri Kubo	Kyoto University, Japan
Tao Takenouchi	Kyoto University, Japan
Kazuhide Okamura	Kyoto University, Japan

Aakriti Khatri	Kathmandu School of Law (Purbanchal University), Nepal
Ashlesha Joshi	Kathmandu School of Law (Purbanchal University), Nepal
Ashma Pradhan	Kathmandu School of Law (Purbanchal University), Nepal
Saramsha Aryal	Kathmandu School of Law (Purbanchal University), Nepal
Ma. Beynouna Meg T. Arbo	University of the Philippines, Philippines
Esabelle Gillian G. Catameo	University of the Philippines, Philippines
Jet Ryan P. Nicolas	University of the Philippines, Philippines
Jasmin Althea A. Siscar	University of the Philippines, Philippines
Peerawat Leekaosong	Thammasat University, Thailand
Thira Saetieo	Thammasat University, Thailand
Sukrada Suknual	Thammasat University, Thailand
Chayapa Preechayanpanich	Thammasat University, Thailand
TSUKADA Haruki	Ritsumeikan Asia Pacific University, Japan
NGUYEN Thu Thuy	Ritsumeikan Asia Pacific University, Japan
GHOZALY Ghiandi Amna	Ritsumeikan Asia Pacific University, Japan
Andhika Hananta Rizqy	Universitas Sebelas Maret, Indonesia
Teresa Yokia Novantia	Universitas Sebelas Maret, Indonesia
Aida Cahya Ardani	Universitas Sebelas Maret, Indonesia
Muhammad Restu Putra Pratama	Universitas Sebelas Maret, Indonesia
Neo Yu Fan	Singapore Management University, Singapore

Amar Pandey	Singapore Management University, Singapore
Joel Tan Yuan Hong	Singapore Management University, Singapore
Adi Mikail Tan Wei Jian	Singapore Management University, Singapore
Jowyn Saw	University of Malaya, Malaysia
Shahlini Sree Kumar	University of Malaya, Malaysia
Nur Irdina binti Jailani	University of Malaya, Malaysia
Charmaine Denisha Lionel	University of Malaya, Malaysia

7. 結果

(1) 優勝チーム

Singapore Management University (Singapore, AC 222)

(2) 準優勝チーム

Universitas Sebelas Maret (Indonesia, AC 220)

(3) 予選ラウンドの結果

Asia Cup 2022: Team Rankings, Preliminary Rounds		
Rank	Team Number	Team
1st	AC 220	Universitas Sebelas Maret (Indonesia)
2nd	AC 222	Singapore Management University (Singapore)
3rd	AC 223	University of Malaya (Malaysia)
4th	AC 213	Purbanchal University, Kathmandu School of Law (Nepal)
5th	AC 217	University of the Philippines (Philippines)
6th	AC 218	Thammasat University (Thailand)
7th	AC 219	Ritsumeikan Asia Pacific University (Japan)
8th	AC 208	Kyoto University (Japan)
9th	AC 203	Diplomatic Academy of Vietnam (Viet Nam)

(4) 準決勝・決勝ラウンドの結果

Asia Cup 2022: Results of the Semifinal & Final Rounds

Semifinal Rounds	Applicant	Respondent
[1]	Purbanchal University, Kathmandu School of Law (Nepal) AC 213	Universitas Sebelas Maret (Indonesia) AC 220
	By a decision of 2 to 1, Universitas Sebelas Maret (Indonesia) won the match and advanced to the Final Round.	
[2]	University of Malaya (Malaysia) AC 223	Singapore Management University (Singapore) AC 222
	By a unanimous decision, Singapore Management University won the match and advanced to the Final Round.	

	Applicant	Respondent
Final Round	Singapore Management University (Singapore) AC 222	Universitas Sebelas Maret (Indonesia) AC 220
	Singapore Management University won the Final Round and received the Asia Cup Championship Award for the second consecutive year. Congratulations!	

(5) 書面順位

Asia Cup 2022: Memorials Rankings		
Rank	Team Number	Team
Best Memorial	AC 208	Kyoto University (Japan)
2nd	AC 223	University of Malaya (Malaysia)
3rd	AC 220	Universitas Sebelas Maret (Indonesia)
4th	AC 218	Thammasat University (Thailand)
5th, tie	AC 202	Sri Lanka Law College (Sri Lanka)
5th, tie	AC 222	Singapore Management University (Singapore)
7th	AC 213	Purbanchal University, Kathmandu School of Law (Nepal)
8th	AC 217	University of the Philippines (Philippines)
9th	AC 219	Ritsumeikan Asia Pacific University (Japan)
10th	AC 203	Diplomatic Academy of Vietnam (Viet Nam)

(6) 弁論順位（原告・被告、各 5 位まで）

Asia Cup 2022: Top 5 Applicant Oralists		
Rank	Name	Team
Best Applicant Oralist	Joel Tan Yuan Hong	Singapore Management University (Singapore)
2nd, tie	Teresa Yokia Novantia	Universitas Sebelas Maret (Indonesia)
2nd, tie	Aida Cahya Ardani	Universitas Sebelas Maret (Indonesia)
4th	Adi Mikail Tan Wei Jian	Singapore Management University (Singapore)
5th	GHOZALY Ghiandi Amna	Ritsumeikan Asia Pacific University (Japan)

Asia Cup 2022: Top 5 Respondent Oralists		
Rank	Name	Team
Best Respondent Oralist	Neo Yu Fan	Singapore Management University (Singapore)
2nd	Teresa Yokia Novantia	Universitas Sebelas Maret (Indonesia)
3rd	Andhika Hananta Rizqy	Universitas Sebelas Maret (Indonesia)
4th, tie	Riona Kato	Kyoto University (Japan)
4th, tie	Saramsha Aryal	Purbanchal University, Kathmandu School of Law (Nepal)

(7) 参考：過去の優勝チーム

2021	Singapore Management University	2009	University of the Philippines
2020	(中止)	2008	Ateneo de Manila University
2019	University of the Philippines	2007	University of the Philippines
2018	National University of Singapore	2006	University of Indonesia
2017	National University of Singapore	2005	National University of Singapore
2016	National University of Singapore	2004	National University of Singapore
2015	University of Malaya	2003	University of Philippines
2014	Singapore Management University	2002	Ateneo de Manila University
2013	Ateneo Law School	2001	National University of Singapore
2012	Ateneo Law School	2000	University of Philippines
2011	Singapore Management University	1999	Ateneo de Manila University
2010	Singapore Management University		

8. 参加者へのアンケート

アジア・カップの今後の改善や、より充実したアジアカップのネットワーク形成などを目的として、「2022年アジア・カップ」終了後、弁論大会参加者に対する簡単なアンケートを実施した。39人の弁論ラウンド参加者のうち、約85%に相当する33人から回答があり、一方で回答者のほぼ全員が「Highly satisfied」ないし「Satisfied」と回答し、他方で「Disatisfied」ないし「Highly dissatisfied」と回答した者はおらず、回答率および参加者の満足度のいずれの点でも目標は達成できたと言えよう。コメント（自由記載欄）の内容も、参加者の満足度が概ね反映されたものとなっており、アジア・カップの今後の改善に向けて参考になるコメントも含まれている。

Please tell us how much you were satisfied/dissatisfied with Asia Cup 2022.					
	Highly satisfied	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied	Highly dissatisfied
(人数)	15	16	2	0	0
(%)	45.5%	48.5%	6.1%	0.0%	0.0%

I am highly satisfied with the competition as a whole. It was an honor to be taking part in such a terrific opportunity to cultivate our legal minds and connect with other students from all over Asia.

I appreciate the effort and kindness of the Organizing Committee. Wish the Asia Cup the best of luck!

Interactions with the Organizing Committee were extremely pleasant

The committee members were very nice and gave fast responses to question, very appreciated. But we experienced a little trouble on the audio since a few judges have microphone that makes their voice not very clear. Other than that, while sadly the competition must be conducted online due to the pandemic, Asia Cup has been a very enjoyable and amazing competition! Kudos to the committee, you guys are awesome!

It was an extremely interesting competition. The moot problem too gave us the opportunity to immerse ourselves in a interesting area of law which we do not usually follow or learn in particular. Unfortunately due to the circumstances of our country and our exams we were unable to participate in the oral rounds. Even though that was the case the OC was kind enough to allow our memo to be ranked and we are extremely grateful in how our our issues were handled. All in all it was an extremely pleasant experience.

We would appreciate a little more transparency in scoring and uniformity of judges during the preliminaries so that the score ranges aren't too extreme. But congratulations to the organizers for a successful Asia Cup! :)

If there are any improvements that I could give, I think the ceremonial award should consist of Best Oralist Award, Best Legal Memorandum Award, and then proceed to the Announcement of the Winner of the Asia Cup Moot Court Competition. This would create suspense for the participants and would be more exciting.

I would like to say big appreciation for Asia Cup 2022 for holding this event despite unfortunate pandemic situation. However, in every successful event there always be a room for improvement. Generally, the process of the competition itself was amazing, but I think, it would be great for the committee to hold an awarding night session for the delegates. But overall, i appreciate Asia Cup so much!

Unfortunately we couldn't participate because of our bar exams. But from the memo round I think it was very comprehensive and was easy to communicate with the organisers and was an overall good experience.

First of all, thank you for organizing such a beautiful program. Unfortunately we couldn't meet this year, but hopefully some day in the future we will meet! Although it was a great program, some of the feedbacks would be:

It would be really interesting if you could provide answers to some of the interesting questions in the moot problem. We all argued on our understanding of the problem, but what was going on in the mind of the drafting committee? Did we address the issue or not? It would be really fun to unravel the mystery of the moot problem at the end!

A training round with judges can help us understand the pace of speech we need to make in program. We had the most difficulty focusing this.

I think future competitions should use the Zoom platform instead - Webex lags a lot. Thank you for organising the competition!

Transparency of scoring and consistency with the range usage would be better appreciated. The event was on time and was organized well. There have been no logistical problems or concerns.

We wish you can improve the audible quality

Asia Cup was extremely considerate about team Sri Lanka being unable to participate in the competition due to our final year exams clashing with the tournament schedule. That was very commendable. The set up of the tournament and the moot problem was also very engaging. Perhaps, Asia cup could increase the number of teams for next year.

Well organized. Organising Committee was very responsive.

Organisers communicated regularly and clearly which made participation easy.

I enjoyed the experience in Asia Cup. Thank you so much! To better know which areas the speakers can improve on, I would like to suggest that the judges' scores given to the participants be broken down to criteria or factor. This will be really helpful in our future training and moot court endeavors. Thank you again!

More time could be given between the semi and final rounds for the teams to consider their arguments when looking at the opponent's skeletons.

9. 総括

(1) 成果

a) 国際法・海洋法に関する実践的知識および英語での弁論技術の涵養

本大会では、海を舞台に繰り広げられる投資をめぐる国際紛争をテーマとして、海洋法を含む国際法の現代的な問題を取り上げたため、模擬裁判に参加する学生は、国内外を問わず、最新の判例、関連する条約等の規定、解釈およびその国家実行を中心に、国際法の先端的な問題について調査・学習を進めることになった。参加学生の質の高い議論に反映されているように、参加学生はこのような経験を通じて、既存の国際法制度の最先端の知識と同時に、そこに残された未解決の課題についての的確に学びとっており、国際法に対する理解の促進という本事業の目的は十二分に達成されたと考える。

さらに、参加学生は、調査・学習の成果を英語での法廷弁論を通じて発表し、相手方の議論に反駁し、ひいては裁判官を担当した優れた実務経験者・研究者を説得するという貴重な機会を得た。こうした経験は、国際社会で活躍しうる有為な人材にとって今日不可欠となっている英語での交渉・説得の技術を養う上で、学生にとって日常得難い有意義なものであったといえよう。

b) アジア地域における法意識の向上・「法の支配」の強化

参加学生たちは、出題された問題の解決のために、海洋法を含む国際法について調査し、解釈して出題された問題の事実にあてはめるという作業を通して、国際法規範を実際に運用することを疑似体験した。このような経験は参加学生の国際法に対する知識・理解を豊かにすることはもとより、参加学生の国際法学への継続的なコミットメントを促したという意味で、本事業は国際社会における法意識の向上、ひいてはアジア地域における「法の支配」の強化に貢献したといえる。

c) アジアの将来を担う若者間のネットワーク形成

本大会の参加学生は、将来的に母国の政府機関や国際機関等の公的機関、法曹、経済、教育・研究界において国際的な活躍が見込まれる有為な人材である。本大会では、オンライン開催に伴うさまざまな制約はあったものの、本大会を通じて出合った参加学生達の交流が一層深まることが予想される。国際平和の発展のためには、このようなそれぞれの国の将来を担う人材の交流は、彼らが将来自国の意思決定の重要な部分に携わるといって大変重要な意義を持つ。今回の一連の企画で醸成されたアジア地域の学生の相互理解および交流の輪は、将来のこの地域における平和・友好関係の礎となるものである。

d) 若手外務省員研修での活用

外務省における国際法研修の一環として、例年同様、外務省新入省員約 80 名が同じ問題文を使って模擬裁判演習を実施し、決勝ラウンドの録画も視聴した。本大会は、こうした研修を通じて、日本における国際裁判対策の強化にも貢献している。

(2) 今後の課題

a) 新型コロナウイルス感染症の影響

国内外における新型コロナウイルス感染症の状況にかんがみ、2020 年はアジア・カップの開催を見送り、「2022 年アジア・カップ」は、2021 年に続き、オンライン開催の形をとることになった。一方では、困難な状況にあっても、人材の持続的な育成という観点から、オンラインで開催した意義は大きいと考えられ、また、オンラインで実施することにより、弁論大会には参加できなかった大学の学生にも決勝ラウンドを傍聴してもらうことができたというプラスの側面もある。他方、アジア・カップのネットワークの広がりや度合いを測る 1 つの指標が参加登録校数であるが、2022 年の参加登録校数 26 校（12 か国）は、2021 年の 31 校（10 か国）と比べても（東京で実地開催した 2019 年は 73 校（17 か国））、参加校数としては減少している。2023 年は 4 年ぶりの実地開催を目指す（2023 年 4 月の Jessup 国際法模擬裁判は米国での実地開催を予定している）、アジア・カップを含む国際法模擬裁判大会は、各大学において前年の参加経験が下級生に引き継がれることによって継続的な参加が可能になっているという面もあり、そのような引き継ぎがなされにくい状況において、再び参加登録校数を 2019 年の水準に戻すことは、実地開催ができるようになったとして、すぐには難しいかもしれない。どのような取り組みを通じてできるだけスムーズにコロナ禍前の状況に戻すことができるか、検討が必要である。

b) 審査のあり方

アジア・カップにおいては、さまざまな事情を考慮して、従来から書面（メモリアル）は原告側のもののみを作成し、提出することになっているが、これは模擬裁判としては異例である。弁論大会出場チームには、原告・被告両方の側の弁論要旨を提出させているが、それぞれ原告・被告として 1 度ずつ弁論を行う予選ラウンドにおいてはともかく、いずれか一方の側でしか弁論を行わない準決勝・決勝ラウンドでは、被告チームは相手チーム（原告）の原告側書面を見ることができのに対し、原告チームは相手チーム（被告）の被告側書面を見ることができないという不均衡が生じている。そのような不均衡を審査にあたってどのように反映させるか、あるいは被告側の書面も提出させることにするか、それぞれのデメリットも考慮しながら検討する必要がある。

また、日本の国際法学会と外務省が共催し、日本で開催していることから、ある程度はやむを得ない面もあるが、裁判官のほとんどが日本人であることも、審査のあり方に関わる課題と位置づけてきた。この点で、「2022年アジア・カップ」においては、過去のアジア・カップ等に関わってきた外国の方に裁判官として協力していただくことが幸いにしてできたが、オンラインではなく日本で実地開催する場合に、このような形での協力体制（特に弁論裁判官）およびアジア・カップのネットワークの定着・拡充をどのようにして実現することができるか、渡航費等の問題を含めて引き続き考える必要がある。

Annex I

「2022年アジア・カップ」決勝進出チーム弁論要旨

原告（Applicant） AC 222: Singapore Management University

被告（Respondent） AC 220: Universitas Sebelas Maret

APPLICANT'S SUMMARY OF ORAL PLEADINGS

Issue 1: The ICJ has jurisdiction and Archang's claims are admissible

1. Parties made declarations accepting the ICJ's jurisdiction, which apply to the exclusion of other dispute resolution procedures under the UNCLOS. Rhotia's reservation, that excludes its declaration where parties agree to some other method of dispute resolution, is not engaged. Archang did not agree to any other method of dispute resolution.
2. Archang's claims are admissible.
 - a. Archang is not required to exhaust local remedies because its claims pertain to losses it suffered directly.
 - b. It is also unnecessary for the ICJ to wait for the CLCS's recommendations on entitlement. The court is equipped to decide on the issues before it since they are legal questions. Parties have also made submissions to the CLCS on the outer limits of their respective continental shelves and these submissions remain undisputed.

Issue 2: The disputed area should be delimited based on natural prolongation

1. Delimitation should be carried out based on natural prolongation because this achieves an equitable solution as required under the UNCLOS.
 - a. On the facts, a consideration of natural features is necessary to achieve an equitable solution.
 - b. The ITLOS in *Bangladesh/Myanmar* was incorrect in finding that natural prolongation is not a basis for entitlement to an outer continental shelf. It erroneously interpreted the relevant provisions in the UNCLOS.
2. Rhotia's submission for delimitation by equal division of the disputed area is untenable. Equal division has only ever been a result and not a method of delimitation. As a method, it fails to achieve an equitable

result because it does not consider other relevant circumstances, like natural prolongation.

Issue 3: Rhotia violated the UNCLOS by boarding the Ocean Challenger ("OC") and initiating criminal proceedings against Ms Kashee

1. Rhotia's actions breached Archang's exclusive jurisdiction over the OC. It is unable to justify this breach as an exercise of law enforcement powers because it had no right of enforcement against unauthorised marine scientific research ("MSR").
2. Rhotia's act of boarding the OC unjustifiably interfered with the OC's freedom of navigation on the high seas. It was unnecessary, unreasonable, and disproportionate.
3. Rhotia's actions amounted to a threat of force that breached Rhotia's obligations to maintain the peaceful use of the sea and to exercise mutual restraint in a delimitation dispute. Deploying armed officers to board the OC goes further than the mere verbal threats that the tribunal in *Guyana v Suriname* held to constitute a threat of force.

Issue 4: Archang did not violate the UNCLOS by allowing the OC to conduct MSR

1. Archang's failure to seek Rhotia's consent does not constitute a breach of any right to regulate MSR that Rhotia may have because Archang had a good faith claim over the disputed maritime area.
2. Archang did not breach its obligation to preserve the environment. The MSR's impact on marine life was limited and there is no evidence that the sea turtles were in fact affected.
3. Archang also did not breach its obligations to make every effort to avoid jeopardising the reaching of a final delimitation agreement. It did not permanently affect any rights that Rhotia may have.

SUMMARY OF PLEADINGS [AC220 RESPONDENT]

PLEADING I

The International Court of Justice ["the Court"] decision to exercise jurisdiction and claims admissibility hinges on the consent of the disputing parties. The Republic of Rhotia ["Rhotia"] had submitted a declaration under Article 287 of the United Nations Conventions on the Law of the Sea ["UNCLOS"] to bring a dispute regarding the interpretation of the treaty to the International Tribunal on the Law of the Sea ["ITLOS"] or arbitral tribunal constituted under Annex VII of UNCLOS. Additionally, Rhotia had also submitted a reservation to the Court's jurisdiction under Article 36(2) of the Court's statute to disputes that have agreed or shall agree to have recourse to other settlements. This conduct implies Rhotia's lack of consent which eliminates the Court's jurisdiction over this Case and deems the State of Archang ["Archang"]'s claims inadmissible.

PLEADING II

The process of continental shelf delimitation beyond 200 nautical miles in the Chelonia Trench Area shall be effected under the equidistance principle to achieve an equitable result. The process consists of dividing the area between Archang and Rhotia on the median line or by adhering to the proportionality test that considers relevant circumstances. Taking note of the distance between disputing parties to the maritime delimitation of the Chelonia Trench area, Rhotia submits to specifically consider security interests and cultural rights.

PLEADING III

The matters concerning Rhotia's conduct onboard the Ocean Challenger under the basis of Act on Protection of the Marine Environment ["APME"] and initiating criminal proceedings against Ms. Kashee over marine scientific

research activities in the Chelonia Trench area as regulated under Foreign Marine Scientific Research Regulation Act["FMSRRA"] are lawful under international law. The lawfulness of Rhotia's conduct is found under the obligation to protect and preserve the marine environment under Article 192 of UNCLOS as well as the law of countermeasures. In any case, Rhotia's law enforcement activities against Ocean Challenger and Ms. Kashee also respected Article 83(3) of UNCLOS as the guiding provision that regulates the rights and obligation of disputing parties to maritime delimitation in the Chelonia Trench area. Under Article 83(3) of UNCLOS, Rhotia submits there is no irreparable prejudice against Archang's rights in the disputed area and the use of force in Rhotia's law enforcement activities against Ocean Challenger is lawful.

PLEADING IV

In the case of marine scientific research by Ocean Challenger in the Chelonia Trench area, Archang violated several provisions under UNCLOS. First, the Ocean Challenger's marine scientific research violates Article 83(3) of UNCLOS since Archang failed to pay due regard to Rhotia's rights in the disputed area. Second, the conduct of the Ocean Challenger did not adhere to the general principle of marine scientific research under Article 240 of UNCLOS. In this Case, Rhotia submits that Archang violated UNCLOS on matters concerning marine scientific research by Ocean Challenger in the Chelonia Trench area.

Annex II

「2022 年アジア・カップ」優秀書面

第 1 位 AC 208: Kyoto University

第 2 位 AC 223: University of Malaya

第 3 位 AC 220: Universitas Sebelas Maret

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. HIGHER, 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

INTERNATIONAL LAW MOOT COURT COMPETITION
MEMORIAL FOR ASIA CUP 2022



IN THE INTERNATIONAL COURT OF JUSTICE

THE PEACE PALACE,
THE HAGUE, THE NETHERLANDS

CASE CONCERNING THE CHELONIA TRENCH AND THE OCEAN CHALLENGER

STATE OF ARCHANG

(Appellant)

v.

REPUBLIC OF RHOTIA

(Respondent)

MEMORIAL FOR THE APPLICANT

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SUMMARY OF PLEADINGS

[I] The International Court of Justice (ICJ) has jurisdiction

- The State of ARCHANG and RHOTIA have mutually consented to be bound by and present the dispute before the ICJ. Both parties' declaration under Article 36(2) amounts to a valid consent accepting the court's jurisdiction to adjudicate the present dispute.
- Article 282 allows for RHOTIA's reservation to its optional clause declaration to be excluded by virtue of parties' agreement which falls within the ambit of "or otherwise" limb.
- It is also expressly mentioned that RHOTIA has agreed to submit the merits of this dispute to ICJ.

[II] The delimitation of the continental shelf in the disputed area is to be effected on the basis of natural prolongation

- The application of natural prolongation is justified by the need for arriving an equitable solution, as it respects the inherent rights of States and natural factors of the shelf area.
- The fact that there are two separate continental shelf that are not connected to each other further supports this position.
- Alternatively, application of equidistance method produces inequitable results based on geographical and economical considerations.

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

- RHOTIA's conduct of boarding the *Ocean Challenger* and seizing research materials is unlawful as it is not permitted by Article 110 of UNCLOS.
- RHOTIA has no jurisdiction to bring criminal proceedings against Ms. Kashee as the *Ocean Challenger* was a ship flying under ARCHANG's flag and hence it was only subjected to the exclusive jurisdiction of ARCHANG following Article 92(1) of UNCLOS.
- RHOTIA violated its obligations under Article 279 of UNCLOS by failing to settle disputes peacefully when armed RHOTIAN coast guard officers boarded the *Ocean Challenger*.

[IV] The State of ARCHANG did not violate UNCLOS by allowing the *Ocean Challenger* to conduct marine scientific research (MSR)

- ARCHANG is entitled to conduct MSR freely as no consent is required from neither party. The area is still within high seas and not under any State's jurisdiction.
- The MSR would not jeopardize or hamper the reaching of the final agreement between the parties as it is of a transitory character.
- The MSR was essentially carried out for marine protection, not breaching the "peaceful purposes and for the benefit of mankind as a whole" purpose as in Article 240 of UNCLOS.

PLEADINGS

I. THE ICJ HAS JURISDICTION OVER THIS DISPUTE AND THE STATE OF ARCHANG'S CLAIMS ARE ADMISSIBLE

A. Both States have consented to the jurisdiction of ICJ

[1] The consent of the States to the dispute as basis for the jurisdiction of ICJ is a well-established principle by this Court.¹ The requirement of consent is embodied in the notion of *forum prorogatum*, that no state can be compelled to submit its disputes to an international court or tribunal without its consent.

[2] ARCHANG and RHOTIA have expressed their consent through declarations recognising the court's jurisdiction as compulsory *ipso facto* in 1980 and 2000 respectively.² As such, ARCHANG has in principle the right to bring RHOTIA, which have accepted the same obligation, before this Court.

[3] Indeed, both parties previously agreed in principle to refer the matter to this court.³ As RHOTIA has accepted the Court's jurisdiction, it cannot now be allowed to unfairly withdraw the expressed consent.

B. RHOTIA's reservation from the declaration is excluded by application of Article 282 of the UNCLOS

[4] In *Somalia v Kenya*⁴ a similar objection on jurisdiction was made by Kenya. Kenya's preliminary jurisdictional objection was on the ground that its reservation excludes from ICJ's jurisdiction disputes concerning which the States Parties agree to have recourse to some other method of

¹ Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America) [1954] ICJ Rep 19.

² Facts, 7[20].

³ Facts, 3[9].

⁴ *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, I.C.J. Reports 2017.

settlement. As signatories to UNCLOS, parties were bound by Part XV on the settlement of disputes via one of the means provided,⁵ to the exclusion of ICJ. The majority, in rejecting Kenya's submissions, argued on Article 282 which permits the non-application of the procedures specified in Part XV of UNCLOS provided there is a mutual agreement to submit the dispute to a certain procedure.

[5] RHOTIA and ARCHANG are member States of UNCLOS.⁶ RHOTIA has made a similar reservation to its optional clause declaration which effectively excludes disputes concerning which parties have agreed or shall agree to have recourse to some other method or methods of settlement.⁷ Such reservation is excluded by the application of Article 282, specifically the "or otherwise" limb in the provision.

[6] Although the parties did not patently enter a general, regional or bilateral agreement to submit disputes to a procedure that entails a binding procedure, the parties did expressly agree to submit the merits of the dispute to ICJ fulfilling this limb.⁸

II. THE DELIMITATION OF THE CONTINENTAL SHELF IS TO BE EFFECTED ON THE BASIS OF NATURAL PROLONGATION

A. Natural prolongation brings about an equitable solution.

[7] The provisions under Article 76 of UNCLOS are without prejudice to the question of delimitation of the continental shelf between States.⁹ Following that, rules and principles applicable to the delimitation of

⁵ United Nations Convention on the Law of the Sea 1982, Art 287.

⁶ Facts, 7[19].

⁷ Facts, 7[20].

⁸ *Ibid.*

⁹ United Nations Convention on the Law of the Sea 1982, Art 76(10).

the continental shelf beyond 200 nautical miles (nm) should be determined according to international judicial practice and state practice.

[8] According to this Court in the *North Sea Continental Shelf* case, delimitation has to be effected following equitable principles.¹⁰

[9] The cardinal principle of natural prolongation does not contradict but respect the principles of equity because the rights of a State over that area of shelf which constitutes the natural prolongation of the land territory "... exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land ...".¹¹

[10] The idea of equity is also associated with "respect to nature", where this Court observed that "there can never be any question of completely refashioning nature...".¹²

[11] As "equity does not necessarily imply equality",¹³ delimitation does not seek to "make equal what nature has made unequal". Thus, the goal of achieving an equitable solution favors the natural prolongation principle which considers natural factors.

[12] The respect for inherent rights and natural factors is of particular importance to ARCHANG because under such unequal natural situation between the States, equity requires that unequal treatment be given to the State which is effected by natural prolongation.

¹⁰ *North Sea Continental Shelf* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969 53[101]. See also *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984 [196-197]; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007 [287].

¹¹ *North Sea Continental Shelf* (n 15) 22[19].

¹² *Ibid*, 49[91].

¹³ *Ibid*.

B. The continental shelves of both States are geologically discontinued.

[13] With regards to continental shelf claims beyond 200nm, cases that rejected natural prolongation as a basis for delimitation are distinguishable from the present case, as there was only one single continental shelf in such cases.¹⁴

[14] In the present matter, there are two separate continental shelves. The continental shelf of ARCHANG slopes gently into the Chelonia Trench whose depth reaches 2500 meters at its deepest.¹⁵ Whereas the continental shelf of RHOTIA gradually descends to a point slightly beyond 200nm from the coast and then sinks steeply into the trench.¹⁶ This proves that the continental shelves of ARCHANG and RHOTIA are not connected and that the Chelonia Trench serves as the boundary between them.

[15] Therefore, if there is "a major and persistent structural discontinuity of the seabed and subsoil ... as to interrupt the essential geological continuity of the continental shelf",¹⁷ then, the concept of natural prolongation would be pertinent to the question of delimitation.

C. The equidistance method leads to inequitable results.

[16] Preliminarily, application of the equidistance method is not obligatory on the Parties either by treaty or as a rule of customary international law.¹⁸

[17] Here, the application of the equidistance method will lead to inequitable results based on two reasons. First, ARCHANG is blessed with

¹⁴ *Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh v Myanmar)* [2012] ITLOS Rep 4 [435]; *In the Matter of the Bay of Bengal Maritime Boundary (Bangladesh v India)* PCA Case no 2010-16(2014) [457]; *Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana v Côte d'Ivoire)* [2017] ITLOS Rep 4 [526]-[527].

¹⁵ Clarifications, [2].

¹⁶ Facts, 1[3].

¹⁷ *North Sea Continental Shelf* (n 15) 56[104].

¹⁸ *Ibid*, 45[81].

wide continental shelf by natural prolongation compared to RHOTIA.¹⁹ An equal division of the area will substantially deprive ARCHANG of the shelf area that it is naturally entitled to by natural prolongation.

[18] Second, ARCHANG has high economic dependency on marine resources.²⁰ *Gulf of Maine* case indicated that economic and social factors could be taken into consideration if the applied methods of delimitation would "be revealed as radically inequitable ... as likely to entail catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned."²¹

[19] The equidistance line drawn between ARCHANG and RHOTIA,²² if applied, will completely deny ARCHANG access to the Chelonia Trench, proven to be rich in marine creatures and mineral resources,²³ thus impacting the livelihood and economic well-being of the population of ARCHANG.

[20] Hence, the equidistance method would result in a delimitation of the continental shelf which would be inequitable and inappropriate.

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

A. The boarding of the Ocean Challenger by RHOTIA was unlawful

[21] The "right of visit" under Article 110 of UNCLOS provides for grounds justifying boarding of a foreign ship on the high seas.²⁴ The right exists as an exception to the generally exclusive jurisdiction of the flag State over ships flying its flag.²⁵

¹⁹ Facts, 1[3].

²⁰ Facts, 1[1].

²¹ *Case concerning delimitation of the maritime boundary in the Gulf of Maine area (Canada/United States of America)*, Judgment, I.C.J Reports 1984 [237].

²² Clarifications, 3.

²³ Facts, 2[7].

²⁴ United Nations Convention on the Law of the Sea 1982, Art 110.

²⁵ *Ibid*, Art 92.

[22] None of the grounds under Article 110 applies to RHOTIA's actions. RHOTIA had also no reasonable grounds to suspect that the *Ocean Challenger* was engaged in such acts as RHOTIA was aware that the *Ocean Challenger* was conducting marine scientific research.²⁶

[23] Hence, RHOTIA's boarding of the *Ocean Challenger* is an infringement of ARCHANG's sovereign prerogatives and authority as it interferes with their regular freedom of navigation. Thus, boarding of the *Ocean Challenger* should only be done with proper and legal authorisation, which RHOTIA did not have.

B. RHOTIA has no jurisdiction to bring criminal proceedings against Ms. Kashee

[24] The *Ocean Challenger* as a ship sailing under ARCHANG's flag was subject to the exclusive jurisdiction of ARCHANG.²⁷ No State may exercise any type of authority over foreign vessels on the high seas because of the principle of freedom of the seas, wherein there is no territorial sovereignty on the high seas.²⁸

[25] This in line with the Lotus principle established in ***France v Turkey***,²⁹ where a State cannot exercise its jurisdiction outside its territory unless an international treaty or customary law permits it to do so.³⁰

[26] Ms. Kashee was arrested for violating RHOTIA's Act on Protection of the Marine Environment (APME) and the Foreign Marine Scientific Research Regulation Act (FMSRRA), both of which are RHOTIAN laws.³¹ This is unlawful as Ms. Kashee, being a citizen and flying under ARCHANG's flag was only

²⁶ Facts, 4[12].

²⁷ United Nations Convention on the Law of the Sea 1982, Art 92(1).

²⁸ *Ibid*, Art 89.

²⁹ *Case Concerning S.S. "Lotus" (France v Turkey)*, Judgment, P.C.I.J. 1927.

³⁰ *Ibid*, 25.

³¹ Facts, 6[18].

subjected to ARCHANG's jurisdiction. Additionally, there has been no international treaty or customary law between ARCHANG and RHOTIA which permitted the action of RHOTIA's arrest.

[27] Additionally, RHOTIA's conduct of unilaterally establishing a marine protected area (MPA) in the Chelonia Trench area is unlawful as the APME does not extend to the high seas as RHOTIA does not have sovereign rights over the disputed area.³²

C. RHOTIA violated its obligations under UNCLOS by failing to settle disputes by peaceful means

[28] Article 279 of UNCLOS provides for the peaceful settlement of disputes whereby state parties shall settle disputes following Article 2(3) of the United Nations Charter ('the Charter') and must seek a settlement using the mechanisms specified in Article 33(1) of the Charter.

[29] Article 33 (1) of the Charter provides that parties to a dispute should first seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, recourse to regional agencies or arrangements, or other peaceful measures of their choosing.

[30] The Article 2(4) prohibition against the threat or use of force against the territorial integrity of States applies equally to situations involving territorial or maritime boundary disputes.³³ In the **Land Reclamation** case, it was said that Art 279 is the inverse of the general principle of international law reflected in Art 2(4) of the UN Charter,

³² Facts, 4[10].

³³ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, at 122, U.N. Doc. A/8028 (1970).

which states that states shall not use or threaten to use force to settle their disputes.³⁴

[31] Ms. Kashee immediately suspended research activities and responded to RHOTIA's unexpected and hostile demands for the immediate termination of research activity.³⁵ However, RHOTIA chose to employ fear and force by boarding the vessel and seizing the research materials, without ever responding to Ms. Kashee. The RHOTIAN coast guard officers were also armed, implying they were prepared to use force against the vessel.

[32] Therefore, RHOTIAN coast guard officers boarding the Ocean Challenger while being armed was a serious threat to international peace and security. This is a violation of its obligation to settle disputes by peaceful means under Article 279 of UNCLOS, Article (3), 2(4), and 33(1) of the UN Charter, and general international law.

IV. ARCHANG DID NOT VIOLATE UNCLOS BY ALLOWING THE OCEAN CHALLENGER TO CONDUCT MARINE SCIENTIFIC RESEARCH (MSR)

A. ARCHANG is entitled to conduct MSR freely in the Chelonia Trench Area

[33] Coastal states' consent is required to conduct MSR on their continental shelf, but only if they possess sovereignty.³⁶ Said sovereignty is only granted once delimitation has taken place.³⁷ As per *Ghana/Côte d'Ivoire*, when two states are disputing over an undelimited area, any unilateral activities they undertook would not violate the sovereign rights of either state.³⁸

³⁴ *Case Concerning Land Reclamation by Singapore in and Around the Straits of Johor (Malaysia v. Singapore)*, (Separate Opinion of Judge Jesus), ITLOS 2003, [2].

³⁵ Facts, 6[16].

³⁶ United Nations Convention on the Law of the Sea 1982, Art 246.

³⁷ *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, I.C.J. Reports 2017.

³⁸ *Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment of 23 September 2017.

[34] If the area has yet to be delimited, it is still bound to the laws applicable to the high seas, wherein all States can freely conduct MSR.³⁹ In UNCLOS, freedom of scientific research is guaranteed on the high seas, though subject to due regard for other States' interests therein.⁴⁰

[35] Presently, both States have yet to retract their *note verbale* to the Commission on the Limits of the Continental Shelf (CLCS), who also has yet to give their recommendations.⁴¹ Thus, the status of the Chelonia Trench Area remains in the high seas and is not under the sovereignty of either State. Both States are free to conduct lawful unilateral activities, which includes the *Ocean Challenger's* MSR.

B. The MSR was of transitory character, thus would not jeopardize or hamper the final agreement

[36] While a dispute concerning overlapping claims on a continental shelf is still ongoing, parties must "make every effort... not to jeopardize or hamper the reaching of the final agreement".⁴² According to ***Guyana v. Suriname***, unilateral activities which cause physical changes to the disputed area may breach the said rule.⁴³ In ***Somalia v. Kenya***, there was no evidence that Kenya's drilling operations would cause permanent physical damage, so they were deemed transitory and did not breach the rule.⁴⁴

³⁹ United Nations Convention on the Law of the Sea 1982, Art 257.

⁴⁰ *Ibid*, Art 87(1).

⁴¹ Facts, 2[5].

⁴² *Ibid*, Article 83(3).

⁴³ *In the Matter of an Arbitration between Guyana and Suriname (Guyana v. Suriname)* [2007] XXX RIAA 1.

⁴⁴ *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, I.C.J. Reports 2017.

[37] Likewise, there is no evidence that the hydrothermal vents would be affected adversely by these activities. Seismic surveys were also held to be of transitory character, in *Aegean Sea Continental Shelf*.⁴⁵

[38] Although there is a possibility that the MSR will affect sea turtle migration patterns to the Chelonia Trench Area, this is only transitory because the MSR only occurs during the material time, whereas migration occurs annually.⁴⁶

C. The MSR was essentially conducted for marine protection

[39] MSR must be carried out exclusively for "peaceful purposes and for the benefit of mankind as a whole".⁴⁷ The Chelonia Trench Area is a marine biodiversity area beyond national jurisdiction (BBNJ); though no legal framework is available for its preservation, it is conventional to make efforts to achieve it.⁴⁸ This is also in line with the 14th United Nations Sustainable Development Goals which aims to protect "life below water".⁴⁹

[40] The MSR was organized to study the hydrothermal vents' ecosystem in the Chelonia Trench area, following the aforementioned principles.⁵⁰

⁴⁵ *Aegean Sea Continental Shelf (Greece v Turkey)*, Judgment, I.C.J. Reports 1978.

⁴⁶ Facts, 5[13]-[14].

⁴⁷ United Nations Convention on the Law of the Sea 1982, Art 240.

⁴⁸ Mary George and Anneliz R. George, "Registration of BBNJ Research Activities: A Move towards Transparency in Research Governance" (2018) 11 JEAIL 140; Abidjan Convention, 'Legal and Institutional Framework' (*BBNJ & The Abidjan Convention Region*) <http://www.highseas-abidjanconvention.org/legal-and-institutional-framework?language_content_entity=en> accessed 25 June 2022

⁴⁹ The Global Goals, 'Life Below Water' (*The Global Goals*). <<https://www.globalgoals.org/goals/14-life-below-water/>> accessed 25 June 2022.

⁵⁰ Facts, 4[11].

PRAYER FOR RELIEF

For all reasons argued in this memorial, the State of ARCHANG, the Applicant, respectfully requests that the Court adjudge and declare that:

I.

The Court has jurisdiction over this case and that 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 UNCLOS 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,

Agents of the State of ARCHANG.

THE INTERNATIONAL COURT OF JUSTICE



AT THE PEACE PALACE,
THE HAGUE, THE NETHERLANDS

ASIA CUP 2022
INTERNATIONAL MOOT COURT COMPETITION

Case Concerning the Chelonia Trench and the Ocean Challenger

STATE OF ARCHANG

(APPLICANT)

v.

REPUBLIC OF RHOTIA

(RESPONDENT)

MEMORIAL FOR THE APPLICANT

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SUMMARY OF PLEADINGS

PLEADING I

The State of Archang ["Archang"] submits to the International Court of Justice ["the Court"] that despite 'the Republic of Rhotia's ["Rhotia"] declaration under Article 287 of the United Nations Conventions on the Law of the Sea ["UNCLOS"], this Court still holds jurisdiction over this Case. Mainly for the reason that the optional clause declaration submitted by Archang and Rhotia under Article 36(2) of the Statute of the International Court of Justice ["ICJ Statute"] invokes Article 282 of UNCLOS, granting the Court's power to exert jurisdiction over this dispute. On the other hand, Rhotia's reservation under Article 36(2) of ICJ Statute does not apply in this Case since no other mutual agreement to settle the dispute is in force as a legal basis for this Court to not exercise its jurisdiction. Finally, Archang's claim are admissible as it was submitted to the Commission on the Limits of the Continental Shelf ["CLCS"]. Therefore, this Court holds jurisdiction over this dispute and Archang's claims are admissible.

PLEADING II

The process of continental shelf delimitation beyond 200 nautical miles in the Chelonia Trench Area shall be effected under the method of natural prolongation. This reasoning emerges from the relevant circumstances of the geographical situation in the Chelonia Trench Area and the proportionality test. For this reason, the equidistance line between Archang and Rhotia shall be adjusted to achieve an equitable result in this continental shelf delimitation process.

PLEADING III

In March 2021, Rhotia's law enforcement officers boarded the Ocean Challenger ships led by Ms. Kashee and seize their research documents concerning the Chelonia Trench Area under the basis of Act on Protection of the Marine Environment ["APME"]. Following this unilateral action, Rhotia initiated criminal proceedings against Ms. Kashee for conducting marine scientific

research without their permission as regulated under Foreign Marine Scientific Research Regulation Act["FMSRRA"]. In this regard, Archang submits that Rhotia violates Article 83(3) of UNCLOS.

PLEADING IV

Archang did not violate the UNCLOS by allowing Ocean Challenger to conduct marine scientific research for several reasons. First, Ocean Challenger's activity of marine scientific research is in compliance with Article 83(3) of UNCLOS. Second, Ocean Challenger's marine scientific research is within the framework regulated by UNCLOS. Therefore, Archang did not violate UNCLOS by allowing Ocean Challenger to conduct marine scientific research in the disputed maritime delimitation in the Chelonia Trench Area.

PLEADINGS

**I. THE COURT HAS THE JURISDICTION OVER THIS DISPUTE AND ARCHANG'S CLAIMS
ARE ADMISSIBLE**

A. THIS COURT HAS JURISDICTION TO SETTLE THE PRESENT DISPUTE

Article 286 of UNCLOS provides that whenever there is no settlement made under peaceful means, any dispute concerning interpretation and application of UNCLOS shall be settled by the court or tribunal that has jurisdiction.¹ In this Case, the Court has jurisdiction to settle the present dispute, since: (1) Rhotia's declaration on the dispute settlement system within UNCLOS is not applicable; and (2) this dispute falls outside the scope of the reservation to Rhotia's optional clause declaration.

***1. Rhotia's declaration on the choice of procedure to dispute
settlement is not applicable***

In this Case, Rhotia made a declaration under Article 287 of UNCLOS by opting for the jurisdiction of ITLOS and arbitral tribunal under Annex VII of UNCLOS to settle a dispute concerning the interpretation and application of UNCLOS without any preference for other choices.² However, Article 282 of UNCLOS provides that an agreement by the parties opting for another procedure that entails a binding decision could preclude this declaration.³ In the case of *Somalia/Kenya*, this Court affirms that an optional clause declaration under Article 36(2) of ICJ Statute constitutes an agreement between parties to preclude the choice of procedure under UNCLOS.⁴ Here, both Archang and Rhotia have made an agreement under optional clause declaration accepting the jurisdiction of this Court.⁵ Accordingly, Rhotia's declaration on the

¹ United Nations Convention on the Law of the Sea 1982. [UNCLOS]. Art. 286.

² *Ibid.* Art. 287; *Agreed Facts*, ¶ 20.

³ *Ibid.* Art. 282.

⁴ *Maritime Delimitation in the Indian Ocean (Somalia v Kenya)*. Preliminary Objections. Judgment. ICJ Reports 2017. [Somalia v. Kenya, Preliminary Objections]. ¶ 128.

⁵ *Agreed Facts*, ¶ 20.

choice of procedure under Article 287 of UNCLOS is not applicable in the present dispute.

2. Rhotia's reservation is not applicable in the present dispute

Rhotia's reservation to optional clause declaration provides a limitation to this Court's jurisdiction as follows:

"dispute in regard to which the parties to dispute have agreed or shall agree to have recourse to some other method or methods of settlement".⁶ This Court affirms in Somalia/Kenya case that such reservation aims to limit the Court's jurisdiction if there is an agreement between disputing parties for resorting to other methods of dispute settlement.⁷ Further, the interpretation of the wording of "have agreed and shall agree" refers to any present and future agreements between disputing parties concerning methods of dispute settlement concluded since the submission of optional declaration to the Court.⁸ The preclusion of this Court's jurisdiction would only emerge when there is an express agreement between the parties.⁹ Here, the only mutual dispute settlement agreement between Archang and Rhotia is the optional clause declarations to this Court.¹⁰ Accordingly, since there is no mutual agreement between the parties to preclude this Court's jurisdiction, Rhotia's reservation is not applicable in the present dispute.

B. ARCHANG'S CLAIMS IS ADMISSIBLE TO THIS COURT OVER THE PRESENT DISPUTE

Pursuant to Nicaragua v Honduras, the Court stated that any claim of continental shelf rights beyond 200 nautical miles by a State party to UNCLOS must be in accordance with Article 76 of UNCLOS and reviewed by the CLCS.¹¹ Similarly in Nicaragua v Colombia, the Court affirmed this requirement under

⁶ *Ibid.*

⁷ *Somalia v. Kenya*, Preliminary Objections. n. 4. ¶ 119.

⁸ *Ibid.* ¶ 120.

⁹ *Factory at Chorzow (Germany v. Poland)*. Judgment of 26 July 1927. Publication of the Permanent Court of International Justice Series A. No. 9. p. 30.

¹⁰ *Agreed Facts*, ¶ 20.

¹¹ *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*. Judgment. ICJ Reports 2007. ¶ 319.

the obligation of the parties to UNCLOS.¹² Additionally, the recommendations adopted by CLCS does not prejudice the position of States which are parties to the ongoing dispute.¹³ In the present Case, Archang's and Rhotia's continental shelf rights had been submitted to and reviewed by CLCS,¹⁴ satisfying the admissibility requirement set by this Court in regards to continental shelf rights claim.

II. THE DELIMITATION OF CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES BETWEEN ARCHANG AND RHOTIA IS TO BE EFFECTED ON THE BASIS OF NATURAL PROLONGATION

The continental shelf delimitation process aims to achieve equitable solutions between States in the disputed area.¹⁵ According to this Court in the Black Sea case, the assessment of this process hinges on the rule of 'equidistance-relevant circumstances' and the proportionality test to achieve an equitable result.¹⁶ To achieve an equitable result, Archang submits to apply the natural prolongation of the State's land territory as the entitlement of the continental shelf in the Chelonia Trench Area.¹⁷

A. THE ADJUSTMENT OF EQUIDISTANCE LINE SHALL BE UNDER RELEVANT CIRCUMSTANCES IN THE DISPUTED AREA

The equidistance line method refers to a median line that establishes a division of two opposing States' areas as the natural prolongation of their territory.¹⁸ In achieving an equitable solution, the appropriateness of the equidistance line method derives from the existence of relevant circumstances to determine the limits of natural prolongation.¹⁹ In this regard, the process of maritime delimitation shall take into account the geographical factors of

¹² *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment. ICJ Reports 2012. ¶ 126.

¹³ *Rules of Procedures of Commission on the Limits of the Continental Shelf*. CLCS/40/Rev.1. 17 April 2008. Annex I, ¶ 5(b)

¹⁴ *Agreed Facts*, ¶ 5-6.

¹⁵ UNCLOS. n. 1. Art. 83(1); *North Sea Continental Shelf*. Judgment. ICJ Reports 1969. [NSCS case]. ¶ 85.

¹⁶ *Maritime Delimitation in the Black Sea (Romania v Ukraine)*. Judgment. ICJ Reports 2009. ¶ 115-122.

¹⁷ UNCLOS. n. 1. Art. 76(1).

¹⁸ NSCS case. n. 15. ¶ 58.

¹⁹ *Ibid.* ¶ 89 - 90.

the Chelonia Trench Area.²⁰ According to this Court in Libya/Malta case, the geographical condition that reflects fundamental discontinuity of a State's seabed regarded as the limit of their continental shelf.²¹ Here, the circumstances of the geographical nature of Rhotia's continental shelf that gradually descends from their coast and sinks steeply to the Chelonia Trench constitutes fundamental discontinuity of Rhotia's continental shelf.²² In contrast, Archang's continental shelf that gradually descends to the trench reflects the geological continuity of their coast.²³ These geographical features establish the Chelonia Trench Area as the natural prolongation of Archang's territory.²⁴ In the light of these circumstances, the adjustment of the equidistance line shall be in accordance with natural prolongation.

B. THE ADJUSTMENT OF EQUIDISTANCE LINE SHALL BE IN ACCORDANCE WITH PROPORTIONALITY TEST

According to this Court in Tunisia/Libya, the principle of proportionality plays a role in achieving equitable results for delimitation disputes.²⁵ In this regard, the geographical situation between the disputing States constitutes a relevant factor in evaluating the equities of maritime delimitation.²⁶ Here, this Court in Jan Mayen ruled that the risk of inequitable results would occur in failing to consider the disparity of coastal length between the States concerned.²⁷ Similar to this Case, Archang and Rhotia hold significant differences in the length of their respective coasts.²⁸ In light of the coastline disparity, therefore, the proportionality

²⁰ NSCS case. n. 15. ¶ 13.

²¹ *Continental Shelf (Libyan Arab Jarnahiriya/Malta)*. Judgment. ICJ Reports 1985. ¶ 36 - 41.

²² *Agreed Facts*, ¶ 3.

²³ *Delimitation of the Continental Shelf (United Kingdom v. France)*. Decision of 30 June 1977. Ad-hoc Arbitration. UNRIAA Vol. XVIII No. 3 - 413. [Anglo - French Continental Shelf Tribunal]. ¶ 104; *Agreed Facts*, ¶ 3.

²⁴ *Ibid.*

²⁵ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*. Judgment. ICJ Reports 1982. ¶ 103.

²⁶ Anglo - French Continental Shelf Tribunal. n. 23. ¶ 101.

²⁷ *Maritime Delimitation in the Area between Greenland and Jan Mayen*. Judgment. ICJ Reports 1993. ¶ 68 - 69.

²⁸ *Clarifications*.

test is applicable in the adjustment of the equidistance line between Archang and Rhotia.

III. RHOTIA VIOLATES UNCLOS BY BOARDING THE OCEAN CHALLENGER AND INITIATED CRIMINAL PROCEEDINGS AGAINST MS. KASHEE

In the case of maritime delimitation, every State party has an obligation under Article 83(3) of UNCLOS, namely (A) an obligation to seek provisional arrangements, and (B) the obligation not to hamper or jeopardize matters concerning the disputed area.²⁹ However, Rhotia's actions on boarding the Ocean Challenger and initiating criminal proceedings against Ms. Kashee violated these obligations.

A. RHOTIA'S OBLIGATION TO SEEK A PROVISIONAL ARRANGEMENT IS NOT SATISFIED

The obligation to seek a provisional arrangement imposes a duty for States to negotiate in good faith on arrangements for provisional utilization of the disputed area irrespective of the outcome.³⁰ In assessing a breach of this obligation, *Guyana/Suriname Award* ruled the conduct of States by not responding to the invitation for negotiation would fulfill this criterion.³¹ Upon the enactment of APME that establishes Chelonia Trench Marine Protected Area ["MPA"], Rhotia failed to respond to the invitation to consult this matter with Archang.³² Given the circumstances, Rhotia's obligation to seek a provisional arrangement is not satisfied.

B. RHOTIA VIOLATES THE OBLIGATION OF NOT HAMPERING OR JEOPARDIZING DISPUTE SETTLEMENT OF DELIMITATION PROCESS

The interpretation of this obligation called upon States to refrain from exercising their rights that may endanger the delimitation process in the

²⁹ UNCLOS. n. 1. Art. 83(3).

³⁰ *Maritime Boundary Delimitation between Guyana and Suriname (Guyana v. Suriname)*. Award of the Arbitral Tribunal under Annex VII of UNCLOS. Permanent Court of Arbitration (PCA). Case No. 2004 - 04. 2007. [Guyana/Suriname Award]. p. 153. ¶ 461.

³¹ *Ibid.* p. 159. ¶ 476.

³² *Agreed Facts*, ¶ 10.

disputed area.³³ In this Case, Rhotia failed to comply with this obligation since (1) there is irreparable prejudice against Archang's rights and (2) the action towards Ocean Challenger reflects a threat of force.

1. The assertion of Rhotia's enforcement jurisdiction caused irreparable prejudice against Archang's rights in the disputed area

The violation on obligation of not hampering or jeopardizing maritime delimitation would emerge when a State creates a risk of irreparable prejudice against other States' rights in the disputed area.³⁴ In this Case, Rhotia established the Chelonia Trench MPA under APME to assert enforcement jurisdiction to protect their interest.³⁵ Following this unilateral action, Rhotia initiated criminal proceedings against Ms. Kashee under APME and FMSRRA for conducting marine scientific research in the Chelonia Trench.³⁶ This shift in Rhotia's law enforcement policy would cause irreparable prejudice against Archang's rights in the disputed area.³⁷ This reasoning emanates from the possibility that a law enforcement activity would deprive the access of other States to the disputed area.³⁸ Therefore, the assertion of Rhotia's enforcement jurisdiction caused irreparable prejudice against Archang's rights on the disputed area.

2. Rhotia's action towards Ocean Challenger reflects threat of force

The tenet of obligation of not hampering or jeopardizing the delimitation process is to achieve peace and friendly relations among nations on dispute settlement.³⁹ Here, Rhotia sent armed coast guard to force the Ocean Challenger crew to hand over their research documents and materials from 8th to 10th March 2021.⁴⁰ Prior to this situation, Rhotia's armed coast guard

³³ UNCLOS. n. 1. Art. 83(3); *Report on the Obligations of States under Articles 74(3) and 83(3) of UNCLOS in respect of Undelimited Maritime Areas*. (2016). British Institute of International and Comparative Law. p. 24. ¶ 83.

³⁴ Guyana/Suriname Award. n. 30. p. 156. ¶ 469.

³⁵ *Agreed Facts*, ¶ 10.

³⁶ *Agreed Facts*, ¶ 18.

³⁷ *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*. Provisional Measures, Dissenting Opinion of Judge Thierry. ICJ Reports 1990. p. 82.

³⁸ *Ibid*; Van Logchem, Y. (2021). *The Rights and Obligations of States in Disputed Maritime Areas*. Cambridge University Press. p. 196.

³⁹ UNCLOS. n. 1. Art. 83(3); Guyana/Suriname Award. n. 30. p. 154. ¶ 465.

⁴⁰ *Agreed Facts*, ¶ 10.

maintained their order to leave the area despite receiving communication from the Ocean Challenger crew.⁴¹ This sequence of events constitutes a threat of force since the crew of Ocean Challenger felt threatened to follow their order⁴² upon the risk of violent consequences for non-compliance from armed Rhotia officers on board.⁴³ Therefore, Rhotia violates the obligation to not hamper or jeopardize the delimitation process by exercising threat of force against the crew of Ocean Challenger.

IV. ARCHANG DID NOT VIOLATES UNCLOS BY ALLOWING OCEAN CHALLENGER TO CONDUCT MARINE SCIENTIFIC RESEARCH

In light of marine scientific research by Ocean Challenger, Archang did not violates UNCLOS for the following reason, namely (A) there is no violation under Article 83(3), and (B) general principle applicable to the conduct of marine scientific research under Article 240 of UNCLOS.

A. ARCHANG DID NOT VIOLATES ARTICLE 83(3) OF UNCLOS BY ALLOWING THE OCEAN CHALLENGER TO CONDUCT MARINE SCIENTIFIC RESEARCH

Article 83(3) of UNCLOS sets out obligations upon parties on maritime delimitation disputes to cooperate and not to hamper the reaching of the final agreement.⁴⁴ Actions in violation of these obligations are actions undermining the rights of either party or causing serious harm to the marine environment.⁴⁵ The Tribunal in Guyana v. Suriname further exemplified activities such as seismic exploration as permissible without consent of the disputing parties.⁴⁶ Accordingly, Ocean Challenger activities in Chelonia Trench Area by using autonomous underwater vehicles (AUV) and seismic surveys have little to no impact on the marine environment as shown by expert

⁴¹ *Clarifications*, ¶ 6.

⁴² *Legality of the Threat or Use of Nuclear Weapons*. Advisory Opinion. ICJ Reports 1996. p. 226. ¶ 47.

⁴³ Guyana/Suriname Award. n. 30. p. 143. ¶ 439.

⁴⁴ UNCLOS. n. 1. Art. 83(3); Milano, E., & Papanicolopulu, I. (2011). *State Responsibility in Disputed Areas on Land and at Sea*. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, 71(3), 587. p. 611

⁴⁵ *The MOX Plant Case (Ireland v. United Kingdom)*. Provisional Measure. Judgment of 3 December 2001. ITLOS List of cases: No. 10. ¶ 64.

⁴⁶ Guyana/Suriname Award. n. 30. ¶ 465 - 466.

opinion.⁴⁷ Therefore, Archang's conduct by allowing the Ocean Challenger's marine scientific research did not violate Article 83(3) of UNCLOS.

**B. IN ANY CASE, THE CONDUCT OF MARINE SCIENTIFIC RESEARCH DID NOT VIOLATES
ARTICLE 240 OF UNCLOS**

In regards with the conduct of marine scientific research, there are general principles under Article 240 of UNCLOS that need to be satisfied, namely (1) the marine scientific research aimed for peaceful purposes, and (2) there are no interference caused against other State from the conduct of marine scientific research.⁴⁸ Here, these principles are satisfied and the conduct of Ocean Challenger is lawful.

1. The marine scientific research is for peaceful purposes

On March 8th 2021, the Ocean Challenger conducted a marine scientific research activities in Chelonia Trench Area.⁴⁹ Pursuant to Article 246(3)⁵⁰ Marine Scientific Research entirely for peaceful purposes and with the goal to establish scientific knowledge for the sake of all mankind must be permissible. In the present Case, the objective of Ocean Challenger activities is solely to study the ecosystem around hydrothermal vents in the Chelonia Trench area arranged by the Ocean University of Archang.⁵¹ The limitation of this principle is also has not been violated, as there is no intention to exploit the resources within the disputed area.⁵² Furthermore, This Court in the *Whaling in the Antarctic Case*, has affirmed the objective test to determine the intention of marine scientific research hinges on the reasonableness of design and implementation of the research on achieving their objectives.⁵³ In the present Case, the objective of scientific research done by Archang is objectively situated on Archang's implementation of the

⁴⁷ *Agreed Facts*, ¶ 14-15.

⁴⁸ UNCLOS. n. 1. Art. 240.

⁴⁹ *Agreed Facts*, ¶ 15.

⁵⁰ UNCLOS. n. 1. Art. 246(3).

⁵¹ *Agreed Facts*, ¶ 11.

⁵² Soons, A. H. (1982). *Marine Scientific Research and the Law of the Sea*. TMC Asser Instituut/Kluwer. p. 165.

⁵³ *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*. Judgment. ICJ Reports 2014. ¶ 97.

Ocean Challenger by launching AUV to take videos of marine life around hydrothermal vents and to collect samples,⁵⁴ and conducted seismic surveys to collect information about the geology of the area.⁵⁵ This reflects Ocean Challenger's objectives as sufficient in justifying their marine scientific research activities for peaceful purposes.

2. The marine scientific research is not unlawfully interfering with the Rhotia's right under UNCLOS

Article 246(8) of UNCLOS provides that marine scientific research activities shall not unlawfully interfering with any activities conducted by other coastal States in pursuit of their sovereign rights and jurisdiction.⁵⁶ In the present case, Rhotia has asserted that the Ocean Challenger marine scientific research is aggravating the dispute between Rhotia and Archang.⁵⁷ However, the marine scientific research activities by Ocean Challenger constitute as research with peaceful purposes and shall be permissible.⁵⁸ Therefore, the marine scientific research is not unlawfully interfering with the Rhotia's right under UNCLOS.

⁵⁴ *Agreed Facts*, ¶ 15.

⁵⁵ *Ibid.*

⁵⁶ UNCLOS. n. 1. Art. 246(8).

⁵⁷ *Agreed Facts*, ¶ 12.

⁵⁸ Rothwell, D.R. & Stephens, T. (2010). *The International Law of the Sea*. Hart Publishing. p. 321.

PRAYER FOR RELIEF

For the foregoing reasons, the Applicant respectfully requests this Honorable Court to find, adjudge, and declare that:

- I. This Court has jurisdiction over this Case and that the claims by Archang are admissible;
- II. The delimitation of the continental shelf beyond 200 nautical miles between Archang and Rhotia is to be effected based on natural prolongation;
- III. The Republic of Rhotia violated UNCLOS by boarding the Ocean Challenger and initiating criminal proceedings against Ms. Kashee;
- IV. Archang did not violate UNCLOS by allowing the Ocean Challenger to conduct marine scientific research.

RESPECTFULLY SUBMITTED,

AGENTS FOR APPLICANT