DISSENTING OPINION OF JUDGE ROBINSON

General Considerations

1. Much of law is about reasonableness. The unreasonableness in the approach of the majority is revealed in their conclusion that "even if a State can demonstrate that it is entitled to an extended continental shelf, that entitlement may not extend within 200 nautical miles from the baselines of another State" (Judgment, para. 81). Thus, even if a State establishes that its outer continental shelf meets the criteria for natural prolongation, according to the majority it cannot benefit from the full extent of its shelf — that is, it cannot extend within 200 nautical miles of the baselines of another State[1]. Ordinarily, a coastal State would benefit from the full extent of such a shelf, subject, of course, to the application of Article 83 on maritime delimitation. The proposition in paragraph 81 is an extraordinary one, and it finds no support in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) or in customary international law; it strikes a jangling, discordant note in the otherwise harmonious relationship between the various maritime zones in the law of the sea. Regrettably, the majority judgment fails to substantiate its proposition, which assumes that a coastal State's 200-nautical-mile exclusive economic zone (EEZ) with its attendant distance-determined continental shelf has priority over another State's outer continental shelf based on natural prolongation. In that regard, it is to be noted that Article 77 of the Convention, which reflects customary international law, in setting out the rights of the State over the continental shelf, does not distinguish between a shelf that is based on natural prolongation and a shelf that is distance-determined. A coastal State enjoys the same sovereign rights in respect of its continental shelf, whether in relation to a natural prolongation-determined shelf or a distance-determined shelf. The relevant provisions of UNCLOS are set out in the Annex to this opinion. It is important to note that these provisions reflect customary international law; they are applicable in the current case because, unlike Nicaragua, Colombia is not a party to UNCLOS.

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[1] I agree with the point concerning nomenclature made by the arbitral tribunal in the case between Barbados and the Republic of Trinidad and Tobago. The tribunal observed that it is more correct to speak of an "outer continental shelf" than an "extended continental shelf" "since the continental shelf is not being extended". This opinion will therefore use the term "outer continental shelf" (*Arbitration between Barbados and the Republic of Trinidad and Tobago, Award of 11 April 2006*, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXVII, p. 165, para. 65, fn. 4).

2. The Judgment does not establish that, under customary international law, there is a hierarchical relationship between continental shelf entitlements based on the criteria of natural prolongation and distance set out in Article 76 (1) of the Convention. The majority's negative response to the first question requires a demonstration that there is an intrinsic, inherent limitation on the extent of a State's continental shelf entitlement based on the criterion of natural prolongation. Under customary international law, there is no inherent limitation on the extent of a State's continental shelf beyond 200 nautical miles such that it cannot extend into a neighbouring coastal State's exclusive economic zone with its attendant continental shelf. In effect, the Judgment has denied a coastal State the full benefit of the natural prolongation criterion in Article 76 (1) of the Convention, which reflects customary international law. The position taken by the majority is all the more strange given that in the *Tunisia/Libya* case, the Court concluded that "[a]ccording to the first part of paragraph 1 the natural prolongation of the land territory is the main criterion" (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 48, para. 47). It must be emphasized, however, that, in that case, the Court did not suggest that there was a hierarchy between the criterion of natural prolongation and the criterion of distance.

3. The Judgment fails to identify any quality or element in title to a distance-determined continental shelf that would make it prevail over title to a shelf based on natural prolongation.

4. In *Guinea/Guinea-Bissau*, the question of the relationship between the two criteria in Article 76 was considered. In that case, speaking of the distance criterion in Article 76 (1), the tribunal held that

> "[t]his second rule for determining the continental shelf by reference to distance, without derogating from the rule of natural prolongation, reduces its scope by substituting it in certain circumstances specified in the above-mentioned paragraph of Article 76 of the 1982 Convention, and through the other provisions of that Article" (*Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau (Guinea/Guinea-Bissau)*, 1985, *International Law Reports (ILR)*, Vol. 77, p. 686, para. 115).

What is significant here is that the tribunal emphasizes that the distance criterion does not derogate from the rule of natural prolongation, and then states that there are "therefore two rules between which there is neither priority nor precedence" (*ibid*., para. 116). It is, of course, true that this decision did not address the precise circumstances of the present case. However, the statement of law that there is neither priority nor precedence between the two criteria is, in principle, beyond question.

5. Since, under Article 76 of UNCLOS, title to a continental shelf based on natural prolongation is co-equal with title to a continental shelf based on

distance, a continental shelf based on natural prolongation that overlaps with a shelf based on distance is as amenable to delimitation as overlapping continental shelves based on natural prolongation or distance. Indeed, there is scholarly writing that Article 83 on the delimitation of the continental shelf "confirms that no distinction is made between the continental shelf within and beyond 200 nautical miles" (see Xuexia Liao, "Is There a Hierarchical Relationship between Natural Prolongation and Distance in the Continental Shelf Delimitation?", *International Journal of Marine and Coastal Law*, 2018, Vol. 33 (1), pp. 79-115); certainly, there is nothing in Article 83 to indicate that it is not applicable to the delimitation of the maritime boundary between the continental shelf of a coastal State beyond 200 nautical miles from the relevant baselines and the continental shelf of another State within 200 nautical miles from the relevant baselines. Indeed, the Convention must be seen as proceeding on the basis of co-equality between title to a continental shelf based on natural prolongation and title based on distance. Since there is co-equality, one title cannot extinguish the other title because both titles have the same valency; consequently, there may be an overlap, in which case maritime delimitation under Article 83 comes into play. More generally, this is also true of the relationship between the maritime zone of one State and a similar maritime zone of another State. Thus, the exclusive economic zone of State A has the same valency as the exclusive economic zone of State B, to which it is adjacent or opposite. The law of the sea is so configured that a coastal State benefits from the full extent of its maritime zones — whether territorial sea, exclusive economic zone or continental shelf, to name a few — subject, of course, to maritime delimitation. The principle of co-equality of maritime zones is a necessary feature of the Convention, whose aim is to establish, "with due regard for the sovereignty of all States, a legal order for the seas and oceans" (UNCLOS, preamble). Co-equality of maritime zones, an assumption of the Convention, gives rise to overlapping entitlements which call for maritime delimitation. The approach of the majority is antithetical to maritime delimitation, a tool essential for the "legal order for the seas and oceans", because that approach sees title to the maritime zone of one State extinguishing title to a similar maritime zone of another State.

6. The Judgment in paragraph 58 cites Nicaragua's submission that the decision in the *Bay of Bengal* cases means that a grey area is created in which the two States "must co-operate" (*Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, pp. 64-68, paras. 225-240; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India), Award of 7 July 2014, RIAA*, Vol. XXXII, pp. 104-106, paras. 336-346). It is true that this result is untidy since one State has sovereign rights over the superjacent waters while another State

has sovereign rights over the seabed. However the obligation to co-operate should not be undervalued. It should not be overlooked that Article 1, paragraph 3, of the Charter of the United Nations provides that one of the purposes of the United Nations is "[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character". Indeed, in 1945, one of the great hopes of the international community was that after the atrocities of the Second World War, the era of national sovereignty would be replaced by an era of international co-operation.

7. The Judgment refers to Colombia's submissions emphasizing that the EEZ was the result of a compromise reached at the Conference and which took into account proposals by developing Latin American and African countries. Colombia is correct in outlining the general features of the EEZ, which is neither territorial sea nor high sea, but in which the coastal State has exclusive sovereign rights over the living and non-living resources. The Judgment cites Colombia as contending "that an exclusive economic zone the water column of which is divorced from the seabed and subsoil is no longer an exclusive economic zone" (para. 64). However, by the same token, it could be said that a continental shelf that may not extend within 200 nautical miles of the baselines of another State, even though it satisfies the scientific criteria for natural prolongation, is no longer a continental shelf. Moreover, although the concept of the EEZ emanated from developing States, it was not part of the bargain that they would surrender the benefits of an outer continental shelf based on natural prolongation; the bargain was that, in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles, a payment would be made to the International Seabed Authority (ISA) to be distributed to States parties to the Convention, taking into account the needs of developing States, on the basis of equitable sharing criteria (see UNCLOS, Article 82).

8. The majority advance two main arguments for the conclusion that

> "under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may not extend within 200 nautical miles from the baselines of another State" (Judgment, para. 79).

The first main argument is that, under customary international law, there is a rule prohibiting a State's outer continental shelf from extending within 200 nautical miles from the baselines of another State.

The First Main Argument: There Is a Rule of Customary International Law

9. In the 1969 *North Sea Continental Shelf* cases, the Court held that customary international law had two elements: extensive and virtually uniform practice, and *opinio juris*. The International Law Commission (ILC), the United Nations body charged with the responsibility of the codification and progressive development of international law, has concluded that these two elements must be separately determined (see the ILC's 2018 Draft conclusions on identification of customary international law, Conclusion 3, paragraph 2), no doubt to guard against the temptation of simply snatching *opinio juris* from practice. Paragraph 8 of the ILC's draft Commentary on its Conclusion 3 emphasizes that "the existence of one element may not be deduced merely from the existence of the other"; but, in the circumstances of this case, this is precisely what the Judgment does: it deduces *opinio juris* merely from the existing practice of 39 States.

10. In the *Lotus* case, the Permanent Court of International Justice (PCIJ) found that the practice of abstention was, by itself, not sufficient to constitute customary international law; it was necessary to provide separately evidence of *opinio juris*, that is evidence that the practice was prompted by a sense of legal obligation (see *"Lotus", Judgment No. 9, 1927, P.C.I.J., Series A, No. 10*, p. 28). In the words of the PCIJ, "for only if such abstention were based on [States] being conscious of having a duty to abstain would it be possible to speak of an international custom" (*ibid.*, p. 28). There can be no presumption that a State's abstention is motivated by a legal obligation. Even if there is such a presumption, it must be one that is rebuttable. In the circumstances of this case, any presumption of *opinio juris* is rebutted by the very clear possibility, as set out below, that the practice of self-constraint may be explained by considerations other than a sense of legal obligation.

11. Against this background, the opinion now proceeds to examine, first, the evidence relating to State practice and, secondly, the evidence relating to *opinio juris*.

12. Article 76, paragraph 7, requires the coastal State to delineate the outer limits of its continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Article 76, paragraph 8, requires the coastal State to submit to the Commission on the Limits of the Continental Shelf (CLCS or the Commission) information on the limits of its continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. The evidence before the Court is that 55 submissions have been made to the CLCS in which coastal States could have, on geological or geomorphological grounds, extended their continental shelves within the 200-nautical-mile zones of other States; of that number, 51 submissions made by 39 States

refrained from asserting limits that extended within 200 nautical miles of the baselines of another State.

13. It is acknowledged that there is a basis for the Court's conclusion that, "[t]aken as a whole, the practice of States may be considered sufficiently widespread and uniform for the purpose of the identification of customary international law" (Judgment, para. 77). This is so because the evidence shows that of 43 States that could have claimed an outer continental shelf that extends within 200 nautical miles of the baselines of another State, 39 have chosen not to so extend their shelves. There is therefore practice that can be considered sufficiently widespread and uniform. However, the reasoning in the Judgment completely breaks down in relation to the element of *opinio juris*.

14. The Court found that the practice before the CLCS "is indicative of *opinio juris*, even if such practice may have been motivated in part by considerations other than a sense of legal obligation" (Judgment, para. 77). This conclusion is unsafe, because the possibility that the practice was motivated by considerations other than a sense of legal obligation permeates and infects that practice in its entirety, thereby disabling it from constituting *opinio juris*. The Court has before it very little, if any, specific or direct evidence of *opinio juris*. This element will, as is most usually the case, be determined inferentially from all the relevant circumstances. In the absence of clear evidence to the contrary, it is simply impossible in this case to separate practice that is properly motivated by a sense of legal obligation from practice that is not so motivated. Nicaragua has submitted that the self-constraint of States "is motivated by considerations other than a sense of legal obligation, in particular a desire to avoid the possibility of their submission giving rise to a dispute with the result that the Commission would not consider it" (*ibid.*, para. 57). Indeed, Nicaragua points out that not even one CLCS submission "states directly or even indirectly that they refrain from encroaching into the EEZ of third States because the EEZ has priority over any claim of an extended continental shelf"[2]. It also points out that, in respect of the protests filed in relation to the CLCS submissions of the four States that claim an outer continental shelf within 200 nautical miles of the baselines of another State,

> "not a single one of the protests has alleged that there was a rule of customary international law that automatically gave priority to the EEZ or 200 [nautical miles] continental shelf of one [S]tate over the extended continental shelf of another, or extinguished such overlapping extended continental shelf claims"[3].

[2] See Written comments by Nicaragua on the reply of Colombia to a question put to it by a Member of the Court, p. 3, para. 15.

[3] *Ibid.*, pp. 4-5, para. 22.

15. The CLCS procedure set out in paragraph 8 of Article 76 of the Convention has special significance for the coastal State. Under that paragraph, after the Commission has received the information submitted to it by the coastal State, it makes recommendations on matters related to the establishment of the outer limits of the continental shelf. In accordance with the last sentence of paragraph 8, the "limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding". Every coastal State would wish to be in a position to establish limits of the shelf that are final and binding. Every coastal State, therefore, has an incentive to ensure that it does not take any action that would prevent the Commission from making recommendations on the basis of the information that it has submitted to the Commission. One such action that would have that result is addressed by Article 5 *(a)* of Annex I of the Rules of Procedure of the CLCS, which reads: "In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute."

16. It is therefore likely that the reason for the States' self-constraint is the very real possibility that the claim to an outer continental shelf which extends within 200 nautical miles of the baselines of another State would lead to a protest, giving rise to a dispute, thereby preventing the Commission from qualifying or considering the coastal State's submission. We know that this has happened to the four States that have claimed such an extension. There were protests; in accordance with Article 5 *(a)* of Annex 1 of the Rules of Procedure of the CLCS, their submissions would not have been processed[4].

17. The possibility that the self-constraint is explicable by other than legal considerations is, therefore, very live in the circumstances of this case, and it is a possibility that affects every single claim made by the 39 States. It is not confined, as the Judgment claims, to a part of those claims because the entirety of the claims may have been motivated by considerations other than a sense of legal obligation. Moreover, it is notable that in describing Nicaragua's submission, in paragraph 57 of the Judgment, the Court uses the language "*in particular* a desire to avoid the possibility of their submission giving rise to a dispute with the result that the Commission would not consider it" (emphasis added). Thus, there might have been other examples of a situation in which the submission to the CLCS was motivated by considerations other than a sense of legal obligation. Notably, although the Judgment in paragraph 57 makes reference to Nicaragua's submission, nowhere in its later analysis (see paragraphs 68-79) does it address that submission.

18. The Judgment places great reliance on the *Gulf of Maine* case to support its conclusion that

[4] The website of the CLCS shows that there have been no recommendations made by the Commission in relation to those four submissions (by China, Somalia, Nicaragua and the Republic of Korea).

> "given its extent over a long period of time, this State practice may be seen as an expression of *opinio juris*, which is a constitutive element of customary international law. Indeed, this element may be demonstrated 'by induction based on the analysis of a sufficiently extensive and convincing practice' (*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 299, para. 111)." (Judgment, para. 77.)

However, the Judgment does not quote the sentence from the *Gulf of Maine* Judgment in full. The last eight words have been omitted: "and not by deduction from preconceived ideas".

19. The context in which the dictum in *Gulf of Maine* was made is completely different from the present case. *Gulf of Maine w*as decided in 1984, a time when customary rules of the law of the sea were not as developed as they are now. In that case, the Court criticized the parties for adopting positions that reflected an *a priori* and preconceived approach rather than a "convincing demonstration of the existence of the rules that each had hoped to find established by international law" (*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 298, para. 109). There is nothing novel or startling in the Court's approach in the *Gulf of Maine* case; it is supported by common sense, as an empirical approach is generally to be preferred over one based on *a priori*, preconceived notions. One does not need to have recourse to the *Gulf of Maine* dictum as authority for the proposition that *opinio juris* may be derived from extensive and convincing State practice. The Court's Judgment is open to criticism because in the particular circumstances of this case there is no basis for deriving *opinio juris* from State practice relied upon.

20. If the *Gulf of Maine* dictum is to apply in this case, the State practice relied on will only be seen as an expression of *opinio juris* if it is "sufficiently extensive and convincing". The practice of 39 States, even if sufficiently extensive, will not establish the element of *opinio juris*, for the reason that it is not convincing. Practice which may be motivated by considerations other than a sense of legal obligation, as is the case here, can scarcely be described as convincing. Consequently, the *Gulf of Maine* dictum is not helpful to the majority.

The Second Main Argument: Article 82 Will Lose Its Raison D'être

21. The second main argument advanced by the majority for its approach is that Article 82 would lose its meaning, if not its raison d'être, if the entitlement of a State to an outer continental shelf were allowed to extend within 200 nautical miles of the baselines of another State (Judgment,

para. 76). Article 82 was part of the compromise reached in the UNCLOS negotiations for a definition of the continental shelf that would incorporate continental shelves beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. The wide-margin States insisted on such a definition. However, Article 82 reflects the price that was paid by those States for that concession. The title of Article 82 is: "Payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles". Paragraph 1 of Article 82 provides:

> "The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured."

There is nothing in either the title or in paragraph 1 that prohibits payments in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles when a coastal State's outer continental shelf extends within 200 nautical miles of another State. The only requirement of Article 82 is that the exploitation must relate to non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. It is incorrect to assert, as the majority does in paragraph 76 of the Judgment, that the payment would not serve the purpose of this provision in a situation where the outer continental shelf of one State extended within 200 nautical miles from the baselines of another State. A plain reading of the title and paragraph 1 of Article 82 makes it clear that the payment is due whenever and *wherever* there is exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured; in all such cases, the payments are

> "made through the Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them" (UNCLOS, Art. 82 (4)).

22. The relationship that the majority finds between Article 82 and the principle of the common heritage of humankind is not shared by the International Seabed Authority in its Technical Study No. 4, which concluded that

> "although Article 82 payments and contributions are for the benefit of States Parties to the Convention, they are not an application of the common heritage principle. This is because the [outer continental shelf] and its resources are subject to the coastal State's sovereign rights and

> are separate from the common heritage principle." (International Seabed Authority, *Issues Associated with the Implementation of Article 82 of the United Nations Convention on the Law of the Sea*, *ISA Technical Study No. 4*, Kingston, Jamaica, p. 23.)

Thus, the purpose of Article 82, which is to ensure the equitable distribution of the payments to States parties to the Convention, taking into account the needs of developing States, is achievable in a situation where the outer continental shelf extends into the 200-nautical-mile EEZ and continental shelf of another State.

23. In light of the foregoing, the majority has failed to establish that, under customary international law, the outer continental shelf of a State may not extend within 200 nautical miles from the baselines of another State; consequently, the Court should have granted Nicaragua's request for maritime delimitation.

(Signed) Patrick L. ROBINSON.

ANNEX TO THE DISSENTING OPINION OF JUDGE ROBINSON

1. Article 56 of UNCLOS provides:

"1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI."

2. Article 76 of UNCLOS provides:

"1. The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

4. *(a)* For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the

margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 *(a)* (i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by co-ordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic

data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts."

3. Article 77 of UNCLOS provides:

"1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil."