OVERLAPPING CLAIMS FOR AN EXTENDED CONTINENTAL SHELF IN THE NORTHEASTERN PART OF SOUTH AMERICA FACING THE ATLANTIC OCEAN

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OFFICE OF LEGAL AFFAIRS, THE UNITED NATIONS
NEW YORK, 2010
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Abstract

The paper focuses on the way recent arbitral awards establishing the maritime boundaries between some States in the Northeastern part of South America and the Caribbean facing the Atlantic Ocean have considered and given weight to the concept of natural prolongation related to the establishment of the outer limits of the continental shelf beyond 200 M (or extended continental shelf). It also considers the consequences of the ensuing submissions to the Commission on the Limits of the Continental Shelf and the reactions of States to those submissions.

Some of the issues under analysis will be: Are the seabed and subsoil in the exclusive economic zone independent from the continental shelf regime?; Are arbitral tribunals unwilling to deal with physical features of the extended continental shelf?; Are the concept of natural prolongation and the test of appurtenance still relevant when establishing an extended continental shelf?

The paper’s objective is also to highlight some gaps and discrepancies among the submissions made to the Commission on the Limits of the Continental Shelf by States located in the Study Area.

The research describes the rules and principles related to the continental shelf, including that extending beyond 200 M, as well as the concept of natural prolongation. International instruments such as the United Nations Convention on the Law of the Sea and the relevant documents of the Commission on the Limits of the Continental Shelf, along with submissions made to it, as well as reactions by States, are analyzed.

It is hoped that the paper can draw the Commission on the Limits of the Continental Shelf’s attention to the complex factual and legal situation within the Study Area.
Summary

**TITLE:** Overlapping claims for an extended continental shelf in the northeastern part of South America facing the Atlantic Ocean

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Dr. Francois Baillet (Second Phase/Academic Co-Supervisor)
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<td>CLCS</td>
<td>Commission on the Limits of the Continental Shelf</td>
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<td>CS</td>
<td>Continental Shelf</td>
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<tr>
<td>DOALOS</td>
<td>Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations</td>
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<tr>
<td>ECS</td>
<td>Extended Continental Shelf (or “outer continental shelf”)</td>
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<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>M</td>
<td>nautical miles (“nm or miles”)</td>
</tr>
<tr>
<td>PCA</td>
<td>Permanent Court of Arbitration</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCLOS</td>
<td>United Nations Convention on the Law of the Sea (or “the Convention”)</td>
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Part 1: Introduction
The continental shelf comprises the seabed and subsoil that are the natural prolongation of a coastal State beyond its territorial sea, up to the outer edge of the continental margin. In cases where the said continental margin does not reach the distance of 200 nautical miles (hereafter M) from the baselines, the continental shelf is measured up to 200 M from its baselines.¹ According to customary international law, coastal States exercise sovereign rights over the continental shelf which is appurtenant, without the need for an express or formal proclamation.

Since its origin and its subsequent evolution and consolidation as a legal concept, the continental shelf has been linked to the scientific concept of natural prolongation of the land territory. In other words, geological and geomorphological features of the continental shelf (scientific and technical criteria) are essential to it.²

Early bilateral treaties, such as the Venezuela-United Kingdom Delimitation Treaty (Gulf of Paria Treaty) of 1942, unilateral declarations such as the Truman Proclamation of 1945, as well as multilateral treaties such as the Geneva Convention on the Continental Shelf of 1958, have all confirmed the connection between the continental shelf, on the one hand, and the rights of the coastal State and the concept of natural prolongation, on the other.

¹ Churchill R.R. and Lowe A.V. The Law of the Sea, Manchester University Press; Manchester, Yonkers, NY : Juris Publ., 1999, p. 150: “It would be difficult to argue that any continental shelf claim consistent with the article 76 (of UNCLOS) formula was not compatible with customary international law.”
² Dupuy, R.J. and Vignes, D. A Handbook on the New Law of the Sea, Hague Academy of International Law, p. 315: “The Physical Fact: The Extension of Continents under the Sea. The establishment by the coastal State of the various maritime areas under their national jurisdiction, far from reflecting the natural elements and characteristics of these particular marine and submarine regions, constitutes rather the expression of a number of interests and claims linked to their use. The outer limits of these areas are thus defined, usually, by means of distance criteria, which cannot but appear somewhat artificial and arbitrary. Such is the case of the territorial sea, the contiguous zone and the exclusive economic zone: one can truly share in their respect the opinion that the marine boundaries of the coastal State never derive from the laws of nature, the configuration of the sea, the seabed or the subsoil. However, it is necessary to adopt a different position with respect to the continental shelf. Although it cannot be regarded as a “natural” boundary, given that the legal concept far from fully and systematically corresponds to the geographical reality, it has to be acknowledged that taking into account of such geographical realities has given rise to this institution and played a crucial role in determining its characteristics.” In this respect, the very use of the term “continental shelf”, itself taken from the language of geography, and used for the first time by Hugh Robert Mill in 1877, is highly significant.”
This linkage has been further reinforced by the judgments of the International Court of Justice and awards of international tribunals, particularly in the North Sea Continental Shelf Cases of 1969.

International law states that the continental shelf of a coastal State may extend beyond 200 M from the baselines from which the breadth of the territorial sea is measured (hereafter Extended Continental Shelf, ECS). Article 76 of the United Nations Convention on the Law of the Sea (hereafter UNCLOS) establishes that information on the limits of the continental shelf beyond 200 M 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 (hereafter CLCS). The CLCS 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. The submission shall contain, inter alia, particulars of such limits along with supporting scientific and technical data. Figure 1 illustrates continental shelf submissions (areas beyond 200 M) made by 12 May 2009 deadline.

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3 Article 76, paragraph 8, UNCLOS
4 Article 4, Annex II, UNCLOS
5 During the Eleventh Meeting of States Parties to UNCLOS, held from 14 to 18 May 2001, it was decided that it was only after the adoption of the Scientific and Technical Guidelines by the CLCS on 13 May 1999 that States had before them the basic documents concerning submissions in accordance with Article 76, paragraph 8, of UNCLOS. Considering the problems encountered by States Parties, in particular developing countries, including small-island developing States, in complying with the time limit set out in Article 4 of Annex II to UNCLOS, the Meeting of States Parties (SPLOS/72) decided that: “(a) in the case of a State Party for which the Convention entered into force before 13 May 1999, it is understood that the ten-year time period referred to in article 4 of Annex II to the Convention shall be taken to have commenced on 13 May 1999; and that (b) the general issue of the ability of States, particularly developing States, to fulfill the requirements of article 4 of Annex II to the Convention is kept under review.”
Figure 1 Continental-shelf claims (areas beyond 200 M) submitted by 13 May 2009 deadline

Sources: National Oceanography Centre, Southampton, UK (www.noc.soton.ac.uk); The Economist. Available at: Continental Shelf claims from risingpowers.foreignpolicyblogs.com

Article 76(4)(a) of UNCLOS as well as other documents of the CLCS continue to confirm the link between the concept of natural prolongation and the appurtenance of the ECS by establishing the formulation of a test of appurtenance in order to enable a coastal State to extend the outer limits of the continental shelf beyond the limit set by the 200 M distance criterion. The test consists of the demonstration of the fact that the natural prolongation of the land territory to the outer edge of the continental margin extends beyond a line delineated at a distance of 200 M from the baselines from which the breadth of the territorial sea is measured.⁶

In 2006, an arbitral tribunal established a maritime delimitation between Barbados and Trinidad and Tobago in the northeastern part of South America facing the Atlantic

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Ocean. The award seems to have partially disregarded existing agreements in the region, allowing one of the Parties to expand its claim for a continental shelf beyond 200 M, hence, potentially affecting third States in the region as well as the international community. In addition, there are pending delimitations in the area.

In 2008, following the award, Barbados, which is a State Party to UNCLOS, made a submission to the CLCS regarding the outer limits of its continental shelf. The outer limit contained in the Executive Summary of the submission was essentially based on the sediment thickness formula (also known as the Gardiner formula). No reference to the concept of natural prolongation or to the test of appurtenance was made. A number of neighboring States, including Venezuela, which is not a Party to UNCLOS, reacted to the submission. Subsequently, in 2009, Trinidad and Tobago also made its submission to the CLCS.

In 2007, another arbitral tribunal established a maritime boundary between Guyana and Suriname, also in the northeastern part of South America facing the Atlantic Ocean. Unlike the award of 2006, the arbitral tribunal was not invited by the Parties to delimit the continental shelf beyond 200 M.

Subsequently, both Parties to the arbitration, also States Parties to UNCLOS, made a submission and presented preliminary information to the United Nations Secretary-General.

Nevertheless, in its preliminary information Guyana did not inform the CLCS of an ongoing process of Good Offices led by the United Nations Secretary-General.

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7 Article 76(4)(a), UNCLOS: “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;”. See also Executive Summary of the Continental Shelf of Barbados, available at: http://www.un.org/depts/los/clcs_new/submissions_files/brb08/brb08_executive_summary.pdf.

concerning an unresolved land dispute, which would have consequences on the pending maritime boundary between the States involved.⁹

As will be shown in the present paper, taking into account that all States in the northeastern part of the South American continent have recognized that there is an area in the Atlantic Ocean where the extended continental shelf claims of Barbados, Guyana, Suriname, Trinidad and Tobago and Venezuela converge and overlap, a cautious approach should be exercised when examining the different information submitted to the CLCS, especially in light of the discrepancies among them. Figure 2 illustrates the

⁹ See principle that “the land dominate the sea” established in numerous ICJ judgments such as in North Sea Continental Shelf, Judgment, I.C.J. Reports 2001, para. 96, p.40; Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, I.C.J. Reports 1978, para. 86, p.36; Qatar/Bahrain, Judgment, I.C.J. Reports 2001, para. 178, p. 40 and Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States), I.C.J. Reports 1984, para. 226, p. 246, hence, relevant to the ongoing Good Offices process led by the Secretary-General of the UN in pursuit to the Agreement to resolve the controversy over the frontier between Venezuela and British Guiana of 1966 available online at: (http://untreaty.un.org/unts/1_60000/16/31/00031501.pdf). According to Article V of the Agreement: “(1) In order to facilitate the greatest possible measure of cooperation and mutual understanding, nothing contained in this Agreement shall be interpreted as a renunciation or diminution by the United Kingdom, British Guiana or Venezuela of any basis of claim to territorial sovereignty in the territories of Venezuela or British Guiana, or of any previously asserted rights of or claims to such territorial sovereignty, or as prejudicing their position as regards their recognition or non-recognition of a right of, claim or basis of claim by any of them to such territorial sovereignty. (2) No acts or activities taking place while this Agreement is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the territories of Venezuela or British Guiana or create any rights of sovereignty in those territories, except in so far as such acts or activities result from any agreement reached by the Mixed Commission and accepted in writing by the Government of Guyana and the Government of Venezuela. No new claim, or enlargement of an existing claim, to territorial sovereignty in those territories shall be asserted while this Agreement is in force, nor shall any claim whatsoever be asserted otherwise than in the Mixed Commission while that Commission is in being.” See Annex 11 for text of the Agreement. For recent recognition of both States of the Good Offices process led by the UN Secretary-General to solve the land controversy see: Prensa MPPRE (Ministerio del Poder Popular para Relaciones Exteriores de la Republica Bolivariana de Venezuela): On 11 July 2009, the Minister of Foreign Affairs of the Republic of Guyana made an Official Visit to Caracas where she held a working Meeting with the Minister of Foreign Affairs of the Bolivarian Republic of Venezuela. During the Meeting, the two Ministers exchanged views on different issues, including the process of Good Offices led by the UN Secretary-General. According to the information: “Por su parte, la canciller Carolyn Rodríguez, señaló que la reunión va a mejorar las relaciones entre estos dos países, y al mismo tiempo agradeció al Ministro Maduro Moros, por el tiempo y sobre todo por el compromiso del Gobierno de Venezuela para con el Gobierno de Guyana. Destacó que el tema fronterizo fue conversado en el encuentro, y que los mismos "se tratarán a través de un proceso que se ha establecido con los buenos oficios de las Naciones Unidas". Available at: <http://www.mre.gob.ve/Noticias/A2009/boletines/julio/boletin-004.htm>. See also El Universal from 14 July 2009, “Venezuela y Guyana reanudaran dialogo sobre frontera” available at: <http://politica.eluniversal.com/2009/07/14/pol_ava_venezuela-y-guyana-r_14A2493603.shtml>
area in the Atlantic Ocean where the extended continental shelf claims of Barbados, Guyana, Suriname, Trinidad and Tobago and Venezuela converge and overlap.

**Figure 2** A map of the Study Area showing the area in the Atlantic Ocean where the extended continental shelf claims (areas beyond 200 M) of Barbados, Guyana, Suriname, Trinidad and Tobago and Venezuela converge and overlap.

Source: Adapted by Author from Google Earth, 2009 (http://earth.google.com/). This map is for illustrative purposes only.

This paper intends to highlight some gaps and discrepancies among the submissions made to the CLCS by a number of coastal States of the region. The paper analyzes the status of the submissions as well as the problems the CLCS might be facing when examining the different submissions. While giving significant emphasis to legal questions, this paper also describes the historic background and context that gave rise to the concept of the continental shelf, including that extending beyond 200 M. Some of the legal questions that will be addressed in this paper are: How did the continental

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10 To see how Google Earth have helped scientists in their work see article published 8 August 2009 on the Italian newspaper *la Repubblica*, “L’ultimo Eden lo ha scoperto Google Earth”. Apart from the main topic on Mount Mabu in Mozambique (www.kew.org/pressimages/maunt_mabu.html.earth.google.com/), other scientists have used Google Earth to discover the shape of the Galesnjak in Croatia, the rests of a Roman villa in Sorbolo in Italy and a crater in Australia.
shelf concept arise (scientific-technical vs. legal)?; Are the seabed and subsoil in the EEZ independent from the continental shelf regime?; What is the relation between Article 76 of UNCLOS and the delimitation of the continental shelf between States?; Have legal arguments replaced scientific and technical evidence when establishing an ECS?; Are arbitral tribunals unwilling to deal with physical features of the ECS?; Are the concept of natural prolongation and the test of appurtenance still relevant when establishing an ECS?; Is the principle of continuity still relevant when establishing an ECS based on the Gardiner formula?; What is the linkage between the CLCS and the process of delimitation of boundaries between States?; In case of a dispute, what should the coastal State making the submission do?; What should the role of the CLCS be in case of a dispute?; What should the subcommission do, should there be a need for further clarification?;

This paper consists of six Parts: Part 1, the present Part, provides an introduction and a brief background; Part 2 describes the historical developments as well as the scientific and legal definition of the continental shelf and the procedures of delineation of the outer limits of the ECS; Parts 3 and 4 describe and analyze, respectively, the recent arbitral awards establishing maritime boundaries in the Northeastern part of South America facing the Atlantic Ocean and the submissions to the CLCS and reactions by States; Part 5 illustrates the role of the CLCS as well as describes the current situation in the region. The last Part, Part 6, concludes the paper with a summary of findings.
Part 2: Relevant factual and legal background
2.1. The Venezuela-UK Delimitation Treaty (Gulf of Paria Treaty) of 1942

On 26 February 1942, Venezuela and the United Kingdom signed in Caracas a Treaty involving the submarine areas of the Gulf of Paria. Through that Treaty, the Parties agreed to define their respective interests in the submarine areas of the Gulf of Paria.

The Treaty defined the term submarine areas of the Gulf of Paria as the seabed and subsoil outside the territorial waters of the Parties to one or the other side of the delimitation line. The Treaty referred solely to the submarine areas of the Gulf.

Both Parties declared that they would not assert any claim to sovereignty or control over those parts of the submarine areas of the Gulf of Paria of the other Party and that they would recognize any rights of sovereignty or control that have been or may hereafter be lawfully acquired by the other Party.

12 Ibid. Second preamble paragraph. As to the legal status of the continental shelf prior the Gulf of Paria Treaty of 1942 see Churchill R.R. and Lowe A.V., op. cit., p. 142: “In the early years of the twentieth century, in the period leading up to the Hague Codification Conference of 1930, it became generally accepted that possession of a territorial sea gave the coastal State proprietary rights over the resources of that sea, including its seabed and subsoil. There were much older claims to the resources of the subsoil, exploited by tunneling from the shore.”
13 Ibid. Article 1
14 Ibid. Article 5
15 Ibid. Article 2. See Churchill R.R. and Lowe A.V., op. cit., p. 143: “The question of jurisdiction and property rights over marine resources was proposed for examination by the Hague conference, but not discussed by that conference. Nonetheless, the practical importance of sea-bed resources was such that it was inevitable that States would soon take action to arrogate to themselves the sea bed adjacent to their coasts. The first step was cautious. In 1942 the United Kingdom, on behalf of Trinidad, and Venezuela concluded a Treaty relating to the Submarine Areas of the Gulf of Paria. Although the treaty bound only the two signatories, its effect was tantamount to the division of the sea bed of the Gulf of Paria between them, since it was most improbable that any other State would have sought to build up a title based on effective occupation of a zone which the coastal States were actively engaged in developing. So the 1942 treaty succeeded, in effect, in delimiting the continental shelf before the legal concept of the continental shelf itself was establish. It is customary, however, to regard the proclamation made by President Truman of the USA in 1945 as the first clear assertion of the idea that the continental shelf belongs to the coastal State.” See also Dupuy, R.J. and Vignes, D. op. cit., p. 325: “Nevertheless, it has to be acknowledged that this Treaty “marks a turning point in the way in which the concept of the continental shelf is used”, for three reasons. Firstly, this was the first time that implicit reference was made to the exploitation of sea-bed mineral resources from the surface of the sea; secondly, it thereby established national appropriation of a maritime fringe, albeit limited, beyond the territorial sea without it appearing necessary or useful to extend the territorial sea; and finally, the Treaty expressly stated that the legal regime of the superjacent waters would not be affected, in
In 1956, during the 357th meeting of the International Law Commission, the Chairman expressed that his main concern was to anchor the definition of the area of the seabed and subsoil to an established scientific criterion of recognized importance, and that he would again stress the distinction between the continental shelf and the continental terrace. According to the Chairman, the term “submarine areas” was used in a treaty between the United Kingdom and Venezuela (Gulf of Paria Treaty) and other official documents.\textsuperscript{16}

As will be seen below in Part 4, section 4.6, in its submission made to the CLCS in 2009, Trinidad and Tobago attached great importance to the Gulf of Paria Treaty, having succeeded the United Kingdom upon independence in 1962. It referred to it as an early contribution to the development of the law of the sea relating to the continental shelf. According to Trinidad and Tobago, the Treaty was the first bilateral agreement ever signed by any two States regarding the delimitation of the seabed and subsoil beyond the territorial sea.\textsuperscript{17}

\textbf{2.2. The Truman Proclamation of 1945}

On 28 September 1945, the then President of the United States of America, Harry S. Truman, made the Presidential Proclamation No. 2667 regarding the policy of the United States of America with respect to the natural resources of the subsoil and seabed of the continental shelf.\textsuperscript{18}
According to the Proclamation, the Government of the United States of America was aware of the worldwide need for new sources of petroleum and other minerals, holding the view that efforts to discover and make available new supplies of these resources were to be encouraged.\(^\text{19}\)

Additionally, according to the United States Government, competent experts were of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization was already practicable or was to become so at an early date.\(^\text{20}\)

Equally, the Proclamation recognized that jurisdiction over those resources was required in the interest of their conservation and prudent utilization when and as development was undertaken.\(^\text{21}\)

In the view of the Government of the United States, the exercise of jurisdiction over the natural resources of the subsoil and seabed of the continental shelf by the contiguous nation was reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore.\(^\text{22}\)

Since the continental shelf was to be regarded as an extension of the landmass of the coastal nation and thus naturally appurtenant to it and since the resources frequently form a seaward extension of a pool or deposit lying within the territory, the United States of America, as a coastal nation, was “compelled” to exercise the necessary self-

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\(^{19}\) Ibid. First preamble paragraph

\(^{20}\) Ibid. Second preliminary paragraph. See also Dupuy, R.I. and Vignes, D. op. cit., p. 325: “In a statement dated 5 June 1943, the Secretary of the Interior, Harold Ickes, recommended that the President Roosevelt consider ways in which the United States could lay claim to the resources of the continental shelf and its superjacent waters, mainly because of the greater need for raw materials as a result of the war. This suggestion received the President’s backing and was forwarded to Secretary of State Hull in a memorandum dated 9 June 1943. An interdepartmental working group was set up and on 28 September 1945, President Truman signed two separate proclamations, one on coastal fisheries and the other on the continental shelf.”

\(^{21}\) Ibid. Third preamble paragraph

\(^{22}\) Ibid. Fourth preamble paragraph
protection for the utilization of those resources as well as to keep close watch over activities off its shores.\textsuperscript{23}

The President of the United States of America, based on the urgency of conserving and prudently utilizing its natural resources, proclaimed that the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to its coasts, appertaining to the United States, were subject to its jurisdiction and control.\textsuperscript{24}

With regard to delimitation, in those cases where the continental shelf extended to the shores of another State, or was shared with an adjacent State, the boundary had to be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation were unaffected.\textsuperscript{25}

In 1956, during the 357\textsuperscript{th} meeting of the International Law Commission, it was expressed that the Commission had no proprietary rights in the term “continental shelf”. The term had existed before the draft and had been used by President Truman in his famous proclamation on the subject. The Chairman’s proposal to substitute the expression “submarine areas” was considered an improvement.\textsuperscript{26}

\begin{flushleft}
\textsuperscript{23} Ibid. See also Dupuy, R.J. and Vignes, D. \textit{op. cit.}, p. 325: “As far as the legal concept of the continental shelf is concerned, it established its main characteristics: as the source of the concept of natural prolongation,...the chief doctrine it enunciated was, as the International Court of Justice stressed in 1969, that of “the coastal State has having an original, natural and exclusive (in short vested) right to the continental shelf off its shores.”

\textsuperscript{24} Ibid. Operative paragraph. See also: Maritime Delimitation in the Black Sea (Rumania v. Ukraine), I.C.J. Reports 2009, paragraph 70. “The 1949 instruments make no reference to the exclusive economic zone or the continental shelf. Although in 1949 the Truman Proclamation and the claims that it had begun to stimulate were widely known, neither Party claimed a continental shelf in 1949 nor is there any indication in the case file that either was preparing to do so. The International Law Commission (ILC) had yet to begin its work on the law of the sea which ultimately led to the 1958 Convention on the Continental Shelf and widespread acceptance of that concept. The concept of an exclusive economic zone in international law was still some long years away.” See also Dupuy, R.J. and Vignes, D. \textit{op. cit.}, p. 326: “ two further factors lent an impact to the Truman Proclamation as much as its content, and possibly even more so: one was political, i.e., the indisputable “weight” of the United States, and one legal. As Slouka commented, it contained two elements which indicated the existence of a deliberate intention to initiate the development of a rule of customary law: first, the proclamation “was based on facts and goals of a general character, not applicable exclusively to the United States” but to all States; second, it contained an “element of reciprocity.”

\textsuperscript{25} Ibid.

\textsuperscript{26} International Law Commission, \textit{op. cit.}, para. 88, p. 135.
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2.3. The Convention on the Continental Shelf of 1958

On 29 April 1958, the Convention on the Continental Shelf was adopted in Geneva. For the purpose of the 1958 Convention, the term “continental shelf” was used as referring:

(a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas and (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Article 2 of the 1958 Convention established the rights of the coastal State over the continental shelf. Accordingly, the coastal State exercised over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

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28 Ibid. Article 1

29 Ibid. Article 2, paragraph 1, 1958 Convention. See Delimitation of the Continental Shelf (UK/France), RIAA, Vol. XVIII, p. 3 (1978), paragraph 77: “Thus, the Court described the principle that a coastal State has inherent rights in the continental shelf which constitutes the natural prolongation of its land territory as “the most fundamental of all the rules of law relating to the continental shelf” and as “enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it”. See also Churchill R.R. and Lowe A.V., op. cit., p. 144: “Throughout the following years more and more States laid claim to some kind of rights over the shelf. By the time of the 1958 Geneva conference about twenty States, some acting both in their own right and on behalf of dependent territories, had
The rights referred to were exclusive in the sense that if the coastal State did not explore the continental shelf or exploit its natural resources, no one could undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.\(^{30}\)

Furthermore, the 1958 Convention reinforced the rights of the coastal State over the continental shelf when establishing that they did not depend on occupation, effective or notional, or on any express proclamation.\(^{31}\)

Finally, the natural resources referred to consisted of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species.\(^{32}\)

2.4. North Sea Continental Shelf Cases of 1969

On 20 February 1969, the ICJ delivered two judgments between, on the one hand, the Federal Republic of Germany and, on the other, Denmark and the Netherlands.\(^{33}\)

In its judgments, the ICJ stated that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio* by virtue of its sovereignty over the land, and

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\(^{30}\) Ibid. Article 2, para. 2, 1958 Convention.

\(^{31}\) Ibid. Article 2, para. 3, 1958 Convention. Churchill R.R. and Lowe A.V., *op. cit.*, p. 145: “But it is quite clear that the doctrine of the continental shelf was firmly established in international law by 1958, and that its position has not weakened since then.”

\(^{32}\) Ibid. Article 2, para. 4, 1958 Convention.

as extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there was here an inherent right.\textsuperscript{34}

The ICJ also stated that more fundamental than the notion of proximity appeared to be the principle of the natural prolongation or continuation of the land territory or domain, or land sovereignty of the coastal State, into and under the high seas, via the bed of its territorial sea which was under the full sovereignty of that State. According to the Court, there were various ways of formulating this principle, but the underlying idea, namely of an extension of something already possessed, was the same, and it was this idea of extension which was determinant. Submarine areas, the ICJ held, did not really appertain to the coastal State “because, or not only because,” there were near to it. What conferred the \textit{ipso jure} title which international law attributed to the coastal State in respect of its continental shelf, was the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already had dominion, in the sense that, although covered with water, they were a prolongation or continuation of that territory, an extension of it under the sea. From this it would follow that whenever a given submarine area did not constitute a natural, or the most natural, extension of the land territory of a coastal State, even though that area may be closer to it than it was to the territory of any other State, it could not be regarded as appertaining to that State: or at least it could not be so regarded in the face of a competing claim by a State of whose land territory the submarine area concerned was to be regarded as a natural extension, even if it was less close to it.\textsuperscript{35}

The ICJ regarded the Truman Proclamation of 1945 as the starting point for its review. Even though the ICJ recognized that such Proclamation was not the first or only one to have appeared, in its opinion it had a special status.\textsuperscript{36}

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\textsuperscript{34} Ibid. Paragraph 19. See also Aegean Sea Continental Shelf Case, ICJ Reports 1978, p. 36, para. 86, where the ICJ stated: “In short, continental shelf rights are legally both an emancipation from and an automatic adjunct of the territorial sovereignty of the coastal State.”

\textsuperscript{35} Ibid. Paragraph 43. See also Dupuy, R.J. and Vignes, D. \textit{op. cit.}, pp. 337-338.

\textsuperscript{36} Ibid. Paragraph 47. See also Libya/Malta, I.C.J. Reports 1985, para. 52, p. 13.
\end{flushleft}
According to the Court, the Truman Proclamation soon became to be regarded as the starting point of the positive law on the subject, and the chief doctrine it enunciated, namely, that of the coastal State as having an original, natural, and exclusive right to the continental shelf off its shores, came to prevail over all others, having been reflected in Article 2 of the 1958 Convention.\(^37\)

The Court held that the institution of the continental shelf had arisen out of the recognition of a physical fact; and the link between this fact and the law, without which that institution would never have existed, remained an important element for the application of its legal regime.\(^38\) The Court went on to state that the continental shelf was, by definition, an area physically extending the territory of most coastal States into a “species of platform” which had attracted the attention first of geographers and hydrographers and then of jurists.\(^39\) The importance of the geological aspects was confirmed by the care, which, at the beginning of its investigation, the ILC took to acquire exact information as to its characteristics.\(^40\) The appurtenance of the shelf to the countries in front of whose coastlines it lied was therefore a fact, and it could be useful

\(^{37}\) Ibid.
\(^{38}\) Ibid. See also Dupuy, R.J. and Vignes, D. op. cit., p. 316.
\(^{39}\) Ibid.
\(^{40}\) See International Law Commission, op.cit., p. 131. The continental shelf: “In addition, there were the Chairman’s amendments to the draft articles, which read as follows: 1. The articles would be preceded by the following preamble: ...; There is a geological continuity and physical unity between the continental and insular territory of each State and the submarine areas adjacent to it;... Article 1: As used in these articles, the expression “submarine areas” refers to the soil and subsoil of the submarine shelf, continental and insular terrace, or other submarine areas,...3. In the other articles of the draft, the expression “submarine areas” would be substituted for the expression “continental shelf.” 56. The CHAIRMAN, replying to the Special Rapporteur and referring to his proposal in paragraph 1, explained that his main concern was to anchor the definition of the area of the seabed and subsoil to an established scientific criterion of recognized importance. Again, the term “submarine areas” was used in a treaty between the United Kingdom and Venezuela and in other official documents. 80. Sir Gerald FITZMAURICE: “The term “continental shelf” was not a legal term but a geological one.” 82. Mr. KRYLOV: “Legal terminology would always lag behind scientific advance.” 88. SALAMANCA said that the commission had no proprietary rights in the term of “continental shelf.” The term had existed before the draft and had been used by President Truman in his famous Proclamation on the subject.” See also Jagota, S. P. Maritime Boundary, Publication on Ocean Development, Martinus Nijhoff Publishers, pp. 388, (1985), page 12: “B. International Law Commission: 1949-1956. On the question of the maritime zones and their outer limits, the major developments which influenced the work of the International Law Commission were the following: (a) Pursuant to the Truman Proclamation on the Continental Shelf, 1945, which was followed in State practice by Mexico, Argentina, Chile, Peru, Costa Rica, Honduras, Ecuador, Nicaragua, Venezuela, Saudi Arabia and others, it became apparent that the concept of the continental shelf had to be recognized and developed with a sound legal basis and with appropriate outer limits.”
to consider the geology of that shelf in order to find out whether the direction taken by certain configurational features should influence delimitation, because in certain localities, they “point-up” the whole notion of the appurtenance of the continental shelf to the State whose territory it did in fact prolong.\textsuperscript{41}

With regard to the delimitation of lateral boundaries between the continental shelves of adjacent States, a matter which the Court recognized had given rise to some consideration on the technical but very little on the juristic level, the Truman Proclamation stated that such boundaries should be determined by the United States and the State concerned in accordance with equitable principles. The Court continued to affirm that those two concepts, of delimitation by mutual agreement and delimitation in accordance with equitable principles, had underlain all the subsequent history of the subject. They were reflected in various other State proclamations of the period and in the later work on the subject.\textsuperscript{42}

The Court continued to refer to the delimitation issue stating that, in certain geographical circumstances that were quite frequently met, the equidistance method, despite its known advantages, led unquestionably to inequity in the sense that the slightest irregularity in a coastline was automatically magnified by the equidistance line as regards the consequences for the delimitation of the continental shelf.\textsuperscript{43}

To illustrate the inequity that the application of the equidistance method would create in certain geographical circumstances, the Court expressly referred to the case of concave or convex coastlines. In such cases, if the equidistance method was employed, then the greater the irregularity and the further from the coastline the area to be delimited, the more unreasonable would the results produced be. The Court went on to say that so great an exaggeration of the consequences of a natural geographical feature would

\textsuperscript{41} Ibid. Paragraph 95

\textsuperscript{42} Ibid. Paragraph 47. See also Delimitation of the Continental Shelf (UK/France), RIAA, Vol. XVIII, p. 3 (1978), para. 195: “Under customary law, the method adopted for delimiting the boundary must, while applying the principle of natural prolongation of territory, also ensure that the resulting delimitation of the boundary accords with equitable principles.”

\textsuperscript{43} Ibid. Paragraph 89
have to be remedied or compensated for as far as possible, being itself creative of inequity.\textsuperscript{44}

The Court found unacceptable that a State should enjoyed continental shelf rights considerably different from those of its neighbors merely because its coastline was roughly convex in form while the coastline of its neighbors was markedly concave, although those coastlines were comparable in length. Therefore, the Court stated, it was not a question of totally refashioning geography, but given a geographical situation of quasi-equality as between the number of States, of abating the effects of an incidental special feature from which an unjustifiable difference of treatment could result.\textsuperscript{45}

The Court justified its rationale by establishing that equity excluded the use of the equidistance method in that present case as the sole method of delimitation. The question for the Court was whether there was any necessity to employ only the method for the purpose of a given delimitation. The Court found that there was no logical basis for that, and that no objection need be felt to the idea of effecting a delimitation of adjoining continental shelf areas by the concurrent use of various methods.\textsuperscript{46}

Consequently, the Court reaffirmed its finding that the international law of continental shelf delimitation did not involve any imperative rule and permitted resort to various principles of methods, as may be appropriate, or a combination of them, provided that, by the application of equitable principles, a reasonable result was arrived at.\textsuperscript{47}

Finally, the Court found that the delimitation was to be effected by agreement in accordance with equitable principles, and taking account all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constituted a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of

\textsuperscript{44} Ibid.
\textsuperscript{45} Ibid. Paragraph 91
\textsuperscript{46} Ibid. Paragraph 90
\textsuperscript{47} Ibid.
the other.\textsuperscript{48} Figure 3 illustrates the decision of the ICJ with regard to the North Sea Continental Shelf Cases of 1969.

\textbf{Figure 3 North Sea Continental Shelf Cases of 1969}

\begin{quote}
Source: North Sea Continental Shelf Cases in Landmark Cases in Public International Law
Authors Eric Heinze, M. Fitzmaurice
Editors Eric Heinze, M. Fitzmaurice
Contributors Eric Heinze, M. Fitzmaurice
Publisher Martinus Nijhoff Publishers, 1998
ISBN 9041197095, 9789041197092
1376 pages on Googlebooks
\end{quote}

As will be seen below in Part 3, section 3.2., during the arbitral proceedings of 2006 between Barbados and Trinidad and Tobago, the arbitral tribunal recognized the

\textsuperscript{48} Ibid. Paragraph 101 (C)(1). See also Continental Shelf (Tunisia/Lybia), Judgment, I.C.J. Reports 1982, p. 18.
importance of the North Sea Continental Shelf Cases of 1969 when it affirmed that the principle of delimitation should avoid the encroachment by one party on the natural prolongation of the other, or its equivalent in respect of the EEZ.⁴⁹

Equally, as will be seen below in Part 3, section 3.3., during the arbitral proceedings of 2007 between Guyana and Suriname, the arbitral tribunal also acknowledged the relevance of the North Sea Continental Shelf Cases of 1969 when it stated that it was not a question of totally refashioning geography whatever the facts of the situation but, given a geographical situation of quasi-equality as between a number of States, of abating the effects of an incidental special feature from which an unjustifiable difference of treatment could result.⁵⁰

### 2.5. UNCLOS 1982

On 10 December 1982, UNCLOS was adopted in Montego Bay, Jamaica.⁵¹

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⁴⁹ See paragraph 232 of the Arbitration between Barbados and the Republic of Trinidad and Tobago available at: <http://www.pca-cpa.org/upload/files/Final%20Award.pdf>.


Article 76 of UNCLOS defines the continental shelf of a coastal State as the seabed 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 M 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.\(^5^2\)

The Article further describes the geological and geomorphological characteristics of the continental shelf when establishing that the continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It clarifies that it does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.\(^5^3\)

For the purposes of UNCLOS, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 M from the baselines from which the breadth of the territorial sea is measured, by either:

(i) a line delineated in accordance with Article 76(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

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\(^{53}\) Article 76, paragraph 3. See also United Nations, 2006. Training Manual for delineation of the outer limits of the continental shelf beyond 200 nautical miles and for preparation of submissions to the Commission on the Limits of the Continental Shelf, DOALOS, New York.
shortest distance from such point to the foot of the continental slope (hereafter: Gardiner formula),\(^{54}\) or

(ii) a line delineated in accordance with Article 76(7) by reference to fixed points not more than 60 M from the foot of the continental slope (hereafter: Hedberg formula).\(^{55}\)

These two rules are affirmative and referred to in the Scientific and Technical Guidelines of the CLCS as the *formulae* lines.\(^{56}\)

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.\(^{57}\)

Notwithstanding the above-mentioned, the coastal State has to establish points comprising the line of the outer limits of the continental shelf on the seabed either not exceeding 350 M from the baselines from which the breadth of the territorial sea is measured or not exceeding 100 M from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.\(^{58}\)

These two rules are negative and referred to in the Scientific and Technical Guidelines of the CLCS as the *constraints* lines.\(^{59}\)

On submarine ridges, the outer limit of the continental shelf shall not exceed 350 M from the baselines from which the breadth of the territorial sea is measured. This does not

\(^{54}\) This formula is also known as the “Irish formula.” See Gardiner, P.R.R. 1978. Reasons and methods for fixing the outer limit of the legal continental shelf beyond 200 nautical miles. pp. 145-177, *Revue Iranienne des Relations Internationales* 11-12.


\(^{56}\) CLCS/11, para. 2.1.4. See also Churchill R.R. and Lowe A.V., *op. cit.*, p. 149: “In broad terms, therefore, a coastal State is entitled to a continental shelf consisting of (a) the sea bed reaching 200 miles from the baselines, and (b), subject to the ‘Irish formula’, any area of physical continental margin (often known as the ‘outer’ continental shelf) beyond it. The limits established by the 1982 Convention allow the inclusion within national jurisdiction of substantially the whole of the physical continental margin.”


\(^{58}\) Ibid. Paragraph 5.

\(^{59}\) See CLCS/11, para. 2.1.7.
apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.\textsuperscript{60}

Accordingly, the Scientific and Technical Guidelines of the CLCS summarize the process in the following terms:

where the natural prolongation of a coastal State to the outer edge of the continental margin extends beyond 200 M from the baselines from which the breadth of the territorial sea is measured, the outer limits of the continental shelf can be extended up to a 1 per cent sediment thickness line, or to a line delineated at a distance of 60 M from the foot of the slope, and not further than a line delineated at a distance of 350 M from the baselines from which the breadth of the territorial sea is measured, or no further than a line delineated at a distance of 100 M from the 2,500 metre isobaths.\textsuperscript{61}

Information on the limits of the continental shelf beyond 200 M from the baselines from which the breadth of the territorial sea is measured is submitted by the coastal State to the CLCS. The CLCS then makes 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 are final and binding.\textsuperscript{62}

\textsuperscript{60} Ibid. Paragraph 6
\textsuperscript{61} See CLCS/11, para. 2.1.14. For a description of the formulae see also Dupuy, R.J. and Vignes, D. \textit{op. cit.}, pp. 348-351.
\textsuperscript{62} Ibid. Paragraph 8. The use of term "the Commission" has been adopted by document CLCS/40/Rev. 1, Rules of Procedure of the Commission on the Limits of the Continental Shelf. However the use of term “CLCS” is unavoidable, for example in referring to specific documents such as CLCS/XX or other specific terms. See Churchill R.R. and Lowe A.V., \textit{op. cit.}, p. 149: “The Commission may make recommendations to States concerning the delimitation; and ‘the limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding’ (LOSC (“UNCLOS”), art. 76(8)). It is not clear how far delimitations not so based must or may be regarded as valid.” See also Freestone, David, Barnes, Richard, and Ong David (eds.). The Law of the Sea: Progress and Prospects. Oxford University Press, USA: 2006; International Law Association (ILA). Preliminary Report of the International Committee on Outer Continental Shelf Issues to the Biennial ILA Conference in New Delhi, India, on 5 April, 2002. See International Law Association, Report of the Seventieth (70\textsuperscript{th}) Conference, New Delhi, 2-6 April, 2002: (London:ILA), pp. 741-53; Lee, Roy S. and Hayashi, Moritaka. (Compilation and edition), New directions in the law of the sea. Regional & national development. New series/New York: Oceana Publications, 1995; Lee, Roy S. and Hayashi, Moritaka. (Compilation and edition), New directions in the law of the sea. Global development. New series/New York: Oceana Publications, 1996; Llewellyn, Huw. The Commission on the Limits of
Finally, the provisions of Article 76 are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.\textsuperscript{63}

Article 77 dealing with the rights of the coastal State over the continental shelf virtually repeats the content of Article 2 of the 1958 Convention.\textsuperscript{64}
As regards the number of submissions made to date to the CLCS in accordance with the provisions of Article 76, 51 submissions have been made and 43 sets of preliminary information have been deposited. Nevertheless, there is still a number of coastal States that would make such submissions based on the likelihood of their having an extended continental shelf.

2.6. The Guinea-Guinea Bissau arbitral award of 1985

On 14 February 1985, an Arbitral Tribunal delivered its award establishing the maritime boundary between Guinea and Guinea-Bissau.

Guinea-Bissau was seeking delimitation according to an equidistance line, whereas Guinea argued in favor of applying the "southern limit" of the Convention on the delimitation of French and Portuguese possessions in West Africa of 1886, extending it as far as might be necessary (a line principally based on a parallel of latitude).

The two Parties asked the Tribunal to determine the course of the single line delimiting their territorial waters, their exclusive economic zones and their continental shelves.

The Tribunal decided that, in order for a delimitation to be made on an equitable and objective basis, it was necessary to ensure that, as far as possible, each State controlled the maritime territories opposite its coasts and in their vicinity. The Tribunal also indicated that a delimitation designed to obtain an equitable result could not ignore the other delimitations already made or still to be made in the region.
With regard to the coastlines of both Parties, the Tribunal found that, considered together, they were concave. It went on to affirm that between two adjacent States, whatever method of delimitation was chosen, the likelihood was that both would lose certain maritime areas that were unquestionably situated opposite and near their coasts. This was the cut-off effect. As regard to the application of the method of equidistance, the Tribunal considered that it had serious drawbacks in the case. In the vicinity of the coast, the application of an equidistance line would give exaggerated importance to certain insignificant features of the coastline, producing a cut-off effect which would satisfy no equitable principle and which the Tribunal could not approve.\textsuperscript{72}

In order to confirm its view, the Tribunal asserted that when in fact there were three adjacent States along a concave coastline,\textsuperscript{73} the equidistance method had the drawback of resulting in the middle State being enclaved by the other two and thus prevented from extending its maritime territory as far seaward as international law permitted.\textsuperscript{74}

According to the Tribunal, a valid method consisted of looking at the whole of West Africa and of seeking a solution that would take overall account of the shape of its coastline.\textsuperscript{75} The Tribunal held that:

In order for the delimitation between the two Guineas to be suitable for equitable integration into the existing delimitations of the West Africa region, as well as into future delimitations which would be reasonable to imagine from a consideration of equitable principles and the most likely assumptions, it was necessary to consider how all these delimitations fit in with the general configuration of the West African coastline.\textsuperscript{76}

\textsuperscript{72} Ibid. Paragraph 103
\textsuperscript{73} In the present case Guinea-Bissau and Sierra Leone enclaved Guinea
\textsuperscript{74} Ibid. Paragraph 104
\textsuperscript{75} Ibid. Paragraph 108
\textsuperscript{76} Ibid. Paragraph 109
With regard the structure and the nature of the continental shelf, Guinea claimed that the criterion of natural prolongation was irrelevant because, apart from the fact that it was also necessary to delimit an economic zone, there was no longer any identity of meaning between geographical and legal notions of the continental shelf. Guinea emphasized that, unlike its situation, Guinea-Bissau would have a continental shelf exceeding a distance of 200 M out to sea and that morphological differentiations of the shelf common to both Guineas were neither well enough known nor well enough marked to constitute natural limits.77

Guinea-Bissau, on the other hand, mentioned distinctive features of the shelf with a view to defend a delimitation that took account of their existence and to orienting the Tribunal towards the choice of the equidistance line it proposed.78

Guinea-Bissau argued that the line would lie within the erosion zone south of the Bijagos, that it would be roughly parallel to the trenches in that zone and that it would pass between the flood deltas of the Orango and Nunez, one of which constituted the prolongation of its territory, while the other constituted the prolongation of Guinea’s territory.79

The Tribunal referred to the rule of natural prolongation of the land territory by quoting the ICJ in its North Sea Continental Shelf Cases (1969). However, the Tribunal held that the rule of natural prolongation was not the only one to be taken into account with regard to UNCLOS because, under the terms of Article 76(1) of UNCLOS, “where the outer edge of the continental margin does not extend up to” 200 M, “the continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea” as far as that distance. This second rule, according to the Tribunal, for determining the continental shelf by reference to distance, without derogating from the rule of natural prolongation, reduced its scope by substituting it in

77 Ibid. Paragraph 113
78 Ibid.
79 Ibid.
certain circumstances specified in Article 76(1) and through the other provisions of that article.\textsuperscript{80}

The Tribunal went on to establish that there were therefore two rules between which there was neither priority nor precedence. However, the rule of natural prolongation could be effectively invoked for purposes of delimitation only where there was a separation of continental shelves.\textsuperscript{81}

Finally, despite the fact that Guinea-Bissau defended its claim of a continental shelf based on the concept of the natural prolongation of its land territory and on geological and geomorphological features, the Tribunal considered that the continental shelves of Guinea and Guinea-Bissau comprised a single whole, without sufficiently marked divisions.\textsuperscript{82} Figure 4 illustrates the decision delivered by the Tribunal in the Guinea-Guinea Bissau arbitral award of 1985.

As will be seen below in Part 3, section 3.2., during the arbitral proceedings of 2006 between Barbados and Trinidad and Tobago, the latter referred to the Guinea-Guinea Bissau arbitral award of 1985 to support its arguments.

\textsuperscript{80} Ibid. Paragraph 115
\textsuperscript{81} Ibid. Paragraph 116
\textsuperscript{82} Ibid.
As will be seen below in Part 3, parties in subsequent arbitrations have apparently decided not to rely on the concept of the natural prolongation of the land territory and on geological and geomorphological features to defend their arguments.
2.7. The Venezuela-Trinidad and Tobago Delimitation Treaty of 1990

The Treaty between Venezuela and Trinidad and Tobago on the delimitation of marine and submarine areas was signed on 18 April 1990.\textsuperscript{83}

The Gulf of Paria Treaty of 1942 ceased to have effect on 23 July 1991 upon the entry into force of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990. As will be seen in Part 4, section 4.6., in its submission to the CLCS, Trinidad and Tobago referred to both treaties in order to support its claim for an extended continental shelf.\textsuperscript{84}

In the preamble of the Treaty of 1990 both Parties resolved, in a true spirit of cooperation and friendship, to settle permanently as good neighbors the limits of the marine and submarine areas within which the respective Governments exercised sovereignty, sovereign rights and jurisdiction through the establishment of a precise and equitable maritime boundary between the two countries.\textsuperscript{85}

According to the treaty, both Parties took into account the rules of international law and the development of the new law of the sea, having agreed to establish a maritime boundary between their respective territorial seas, continental shelves and exclusive economic zones \textit{and to any other marine and submarine areas which have been or might be established by the Parties in accordance with international law} (emphasis added).\textsuperscript{86}

Regarding the delimitation lines of the marine and submarine areas in the Atlantic Ocean, the Treaty established geodesics connecting a number of geographical

\textsuperscript{84} See online: \texttt{<http://www.un.org/Depts/los/clcs_new/submissions_files/tto49_09/tto2009executive_summary.pdf>}. \textsuperscript{85} Ibid. Preliminary paras. 2 and 3 and Article 1 \textsuperscript{86} Ibid.
coordinates, amongst them Point 22, which is situated approximately on the outer edge of the continental margin which delimits the national jurisdiction of Venezuela and of Trinidad and Tobago, on the one hand, and the International Seabed Area, which is the common heritage of mankind, on the other. Despite the fact that Venezuela is not a State Party to UNCLOS, it has accepted the geological and geomorphological definition of the continental shelf as reflected in Article 76 of UNCLOS. Additionally, as will be seen in Section 4.2., when Barbados submitted information to the CLCS, it claimed two points (points FP1 and FP2) located to the southeast of Point 22 of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990.

Both Parties to the Treaty of 1990 reserved the right, in case of determining that the outer edge of the continental margin was located closer to 350 M from the respective baselines, to establish and negotiate their respective rights up to the outer edge in conformity with the provisions of international law. As will be seen in Section 4.6.2., Trinidad and Tobago referred to the Treaty of 1990 when making its submission to the CLCS. With regards to the rights of third States, the Treaty stated that no provision contained in it would prejudice or limit those rights. Figure 5 illustrates the maritime boundary established by the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990.

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87 Point 22 of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 is an open-ended delimitation that extends beyond 200 M. As will be seen in Section 3.2. below, during the arbitral proceeding of the 2006 award between Barbados and Trinidad and Tobago, both parties referred to this Treaty. The Arbitral Tribunal partially took it into account.

88 Ibid. Article 2, para. 1.

89 With regard to States not Parties to UNCLOS establishing the outer limits of its continental shelf (according to Article 76) see: Report of the Secretary-General A/52/487, Fifty-second session of 20 October 1997, Agenda item 39 (a) Oceans and the Law of the Sea: Law of the Sea; SPLOS/31 of 4 June 1998, Eight meeting, New York, 18-22 May 1998, Report of the Eight Meeting of States Parties (Prepared by the Secretariat); Report of the Secretary-General A/53/456, Fifty-third session of 5 October 1998, Agenda item 38 (a) Oceans and the Law of the Sea: Law of the Sea. See also Churchill R.R. and Lowe A.V., op. cit., p. 150: “Moreover, some States that retain the older formula have stated that they consider article 76 of the 1982 Convention to represent international law. It would be difficult to argue that any continental shelf claim consistent with the article 76 formula was not compatible with customary international law.”

90 Ibid.
2.8. The Barbados-Guyana EEZ Co-operation Treaty of 2003

On 2 December 2003, thirteen years after the signature of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990, Barbados and Guyana signed in London the Exclusive Economic Zone Co-operation Treaty between the State of Barbados and the Republic of Guyana concerning the exercise of jurisdiction in their EEZ in the area of bilateral overlap within each of their outer limits and beyond the outer limits of the EEZ of other States (hereafter: EEZ Co-operation Treaty).

The area of co-operation is

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91 See online: <http://untreaty.un.org/unts/144078_158780/7/7/14504.pdf>. See Annex 6. See also Barbados’ Memorial of the arbitral proceedings of 2006 at: <http://www.pca-cpa.org/upload/files/BM.pdf>, para. 92, p. 41 as well as Trinidad and Tobago’s Counter-Memorial, op. cit., para. 96, p. 31 and para. 98, p. 32. See also Garner, Bryan (Editor in Chief), Black’s Law Dictionary, Ninth Edition, West, Thomson Reuters, 2009, pp. 1920. This Dictionary defines Acquiescence in the following terms: “Passivity and inaction on foreign claims that according to customary international law, usu. call for protest to assert, preserve, or safeguard rights. The result is that binding legal effect is given to silence and inaction. Acquiescence, as a principle of substantive law, is grounded in the concepts of good faith and equity.” Ironically, Barbados refers to both, acquiescence and estoppel in its Reply, available online at: <http://www.pca-cpa.org/upload/files/BR.pdf>, para. 332, p. 167. According to Barbados: “In other circumstances, evidence of acquiescence, particularly over a long period, can constitute weighty evidence of
located south of the maritime boundary line of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990. It is worth reminding that, according to the principle res inter alios acta, this Treaty is not opposable to Venezuela, Trinidad and Tobago or to any other third State.

The Treaty aimed to establish and regulate, in accordance with generally accepted principles of international law and UNCLOS, a co-operation zone (known as the Co-operation Zone) for the exercise of joint jurisdiction, control, management, development, exploration and exploitation of living and non-living natural resources, as well as all other rights and duties established by UNCLOS, within the area over which a bilateral overlap occurred between Barbados’ and Guyana’s respective exclusive economic zones and beyond the outer limits of the EEZ of other States.

The Parties agreed that the Co-operation Zone was the area of bilateral overlap between the EEZ encompassed within each of their outer limits measured to a distance of 200 M from the baselines from which the breadth of the territorial sea was measured, and beyond the outer limits of the EEZ of other States at a distance of 200 M measured from the baselines from which their territorial sea was measured. For the purposes of the Treaty, the term “exclusive economic zone” and its legal regime had the meaning ascribed to it in Part V of UNCLOS. The Treaty established that the Parties could

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92 As will be seen in Section 4.3.3., Venezuela claims an ECS in that area.
93 See comments in para. 349 of the arbitral award of 2006 (Barbados-Trinidad and Tobago). Apart from Article 34 of the Vienna Convention on the Law of Treaties 1969, see also the principle pacta tertiis nec nocent nec prosunt, also contained in that Convention. This general rule states that a treaty does not create either obligations or rights for a third State without its consent.
94 Ibid. Article 1, paragraph 1.
95 Ibid. Article 2, paragraph 1. See also Brown, E.D., The International Law of the Sea, Volume I Introductory Manual, Dartmouth, 1994, pp. 494. "Under both Article 2(3) of the Geneva Convention on the Continental Shelf, 1958 and Article 77(3) of the UN Convention, the coastal State has no need to claim a continental shelf; it enjoys its entitlement ipso jure, by automatic operation of the law. Similarly, the International Court has accepted that ‘the coastal State’s rights [in the continental shelf] exist ipso facto and ab initio without there being any question of having to make a good a claim to the areas concerned.’ There is no corresponding provision in the UN Convention so far as the EEZ is concerned and it is generally recognized that a State must claim an EEZ in order to be entitled to a continental shelf of at least 200 miles in breadth (where geographically feasible), the combination of this two rules produces a curious result. It means that States have an automatic entitlement to the bed and the subsoil of the 200-mile EEZ, which coincides with the continental shelf, but have to claim the superjacent water column. It
contemplate, by agreement at a later date, to delimit an international maritime boundary between them.\textsuperscript{96} It is noteworthy that the Treaty of 2003 does not reflect the content of Article 56(3) of UNCLOS which reads: “The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI (Continental Shelf)”\textsuperscript{97}

may be noted in passing that, under Article 56(3) of the UN Convention, the coastal State’s rights in the seabed and subsoil of the EEZ are to be exercised in accordance with Part VI, that is, the Part dealing with the continental shelf.” O’Connell, D.P., The International Law of the Sea, Volume I, Clarendon Press, Oxford, 1982, pp. 634. “But, whereas the coastal State is required to allocate the surplus of the allowable catch in the case of living resources, so that in this sense the EEZ is not exclusive, the Draft Convention refers, in the case of non-living resources, to Part VI which deals with the continental shelf. In that Part the continental shelf is defined as extending to a minimum of 200 miles, but beyond to the outer edge of the continental margin. The Draft Convention repeats the essential provisions of the Geneva Convention on the Continental Shelf respecting the exclusiveness of the coastal State’s rights. In this rather roundabout way, the Draft Convention, instead of substituting the EEZ for the continental shelf, really restates the continental shelf doctrine and partially relabels it.”

\textsuperscript{96} Ibid. Article 2, paragraph 3.

\textsuperscript{97} Article 56, UNCLOS: “Rights, jurisdiction and duties of the coastal State in the exclusive economic zone 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 seabed and of the seabed 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. 3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI (Continental Shelf).” For history of the adoption of Article 56, specifically of its paragraph 3, see Nordquist, Myron H., Nandan, Satya N. and Rosenne, Shabtai. (edition), United Nations Convention on the Law of the Sea 1982, A Commentary, Volume II, Articles 1 to 85, Annexes I and II and Final Act, Annex III, Dordrecht, Martinus Nijhoff, 1985.”The Evensen Group (an Informal Group of Juridical Experts) also recommended that the rights of the coastal State in this article (Article 45 of ISNT/Part II, later Article 56 of UNCLOS) be “without prejudice” to the provisions of the Convention concerning the continental shelf. In the ISNT/Part II, article 45 addressed the rights, jurisdiction and duties of the coastal State in the exclusive zone, and read. 3. The rights set out in this article shall be without prejudice to the provisions of Part VI [continental shelf]. The Group of 77 did not mention this question (see Nordquist, Nandan and Rosenne, op.cit., p. 534 referring to A/CONF.62/WP.8/Part II (ISNT, 1975), article 45, IV Off. Rec. 152, 159 and 160 (Chairman, Second Committee), see also Platzoder, Renate (compilation and edition), Third United Nations Conference on the Law of the Sea, Documents, Volume IV, pp. 209-210). Despite this large number of suggested amendments, some of which were later incorporated in other provisions of the Convention, few changes were made in the RSNT/Part II. Article 44 of that text read. 3. The rights set out in this article with respect to the bed and subsoil shall be exercised in accordance with Chapter IV [continental shelf] (see A/CONF.62/WP.8/Rev.1/Part II (RSNT, 1976), article 44, V Off. Rec. 151, 160 (Chairman, Second Committee). Paragraph 3 was modified to provide that the coastal State rights with respect to the bed and subsoil of the exclusive economic zone were to be “exercised in accordance with” the provisions of the continental shelf (see Nordquist, Nandan and Rosenne, op.cit., p. 537). An informal proposal by Peru would have replaced in paragraph 1(a) the phrase “of the sea-bed and subsoil.” Peru explained that this change did not affect the substance but reflected the logical order in which the three spaces (sea, seabed and subsoil) should be enumerated, “since the exclusive economic zone” comprises primarily the sea and and subsidiarily the sea-bed and subsoil (which are assimilated to the continental shelf where it does not exceed 200 miles. See C.2/Informal Meeting/67 (1982, mimeo.) article 56 (Peru). Reproduced in V Platzoder 72.). It was subsequently reported by the Chairman of the Drafting Committee that the Informal Plenary had agreed to change the phrase “of the sea-bed and subsoil and the superjacent waters” to read “of the waters superjacent to the sea-bed and of the sea-bed and subsoil.” This was reflected in the final text of article 56, paragraph 1(a). In relation to natural resources, the coastal State has
The Treaty also established a Joint Non-Living Resources Commission responsible for exercising the joint jurisdiction of the Parties over non-living natural resources within the Co-operation Zone.\textsuperscript{98}

Notwithstanding the fact that, in principle, the Joint Non-Living Resources Commission would deal with non-living resources within the Co-operation Zone, the Treaty stated that any single geological structure or field of non-living natural resources that lied in whole or in part across the outer limit of the Co-operation Zone should be considered to straddle the Co-operation Zone.\textsuperscript{99}

The Treaty clarified that any single geological structure or field of non-living natural resources that straddled the outer limit of the Co-operation Zone from the exclusive economic zone of either Party should be apportioned between them based on unitisation arrangements, as specifically provided by the Joint Non-Living Resources Commission.\textsuperscript{100} As will be seen in Section 3.2.3.3., the approach that would lead to the crystallization of a dichotomy in the institution of the continental shelf whereby the 200

\textsuperscript{98}Ibid. Article 6.

\textsuperscript{99}Ibid. Article 6, para. 6. See Dupuy, R.J. and Vignes, D. \textit{op. cit.}, pp. 352-353: “The first is that the breadth of the legal continental shelf varies between a \textit{minimum} and a \textit{maximum}, with this two limits being defined with the help of the numerical method. For the minimum size, it is the 200-mile criterion which applies, as we mentioned when analyzing the concept of natural prolongation (art. 76, para. 1). In this solution, the continental shelf encompasses the sea-bed and the subsoil of the exclusive economic zone (which therefore only has a nominal existence, see Article 56, paragraph 1 (a) \textit{de jure} as well as \textit{de facto} – in that the Convention expressly states that it is the continental shelf regime which applies to this space, which belongs simultaneously to two separate institutions (art. 56, para. 3). Regarding the \textit{maximum} extension, this is defined in article 76, paragraph 5, of the Convention by two alternative and non-cumulative criteria.”

\textsuperscript{100}Ibid. Article 6, paragraph 7. See also Trinidad and Tobago’s position with regard to the Barbados-Guyana EEZ Co-operation Treaty of 2003 during the proceedings of the arbitral award of 2006 (Barbados-Trinidad and Tobago) in para. 26, p. 10 of Trinidad and Tobago’s Counter-Memorial available online at: <http://www.pca-cpa.org/upload/files/TTCM.pdf>.
M distance criterion prevails over the concept of natural prolongation introduces an element of uncertainty as it increases the possibilities of a creeping jurisdiction. Figure 6 illustrates the Barbados-Guyana EEZ Co-operation Zone of 2003.

**Figure 6** Map showing the Barbados-Guyana EEZ Co-operation Zone of 2003

2.9. Conclusion

Venezuela and Trinidad and Tobago made an early contribution to the development of the law of the sea relating to the continental shelf when in 1942 Venezuela and the United Kingdom (Trinidad) signed the historic Gulf of Paria Treaty that delimited the submarine areas of that Gulf.\textsuperscript{101} The Treaty, to which Trinidad and Tobago succeeded upon independence in 1962, was the first bilateral agreement ever signed by any two States regarding the delimitation of the seabed and subsoil beyond the territorial sea. That Treaty ceased to have effect in 1991 upon the entry into force of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990, which reflects current international law as regards the definition of the continental shelf contained in Article 76 of UNCLOS.

The North Sea Continental Shelf Cases of 1969 can still be regarded as a milestone with regard to the continental shelf as they shed light on, \textit{inter alia}, the concept of natural prolongation and the test of appurtenance, in other words, on the importance of geological and geomorphological features of the continental shelf (scientific and technical criteria). The concept of natural prolongation and the test of appurtenance are both key elements for the establishment of the continental shelf, particularly the extended continental shelf located beyond 200 M.

The Guinea-Guinea Bissau arbitral award of 1985 also made a significant contribution to issues related to the delimitation of the continental shelf when establishing that in order for the delimitation to be suitable for equitable integration into the existing delimitations in the region, as well as into future delimitations which would be reasonable to imagine from a consideration of equitable principles and the most likely assumptions, it was necessary to consider how all these delimitations fit in with the general configuration of coastline.

After having outlined in this Part the historical, factual, and legal background of the continental shelf along with its inherent elements of the concept of natural prolongation

and the test of appurtenance, as well as the procedures for delineating the ECS, the following Part will deal with recent arbitral awards related to the northeastern part of South America facing the Atlantic Ocean and their impact on the ECS of the region. As will be seen in Part 3, during the arbitral proceedings of 2006 between Barbados and Trinidad and Tobago, both parties made reference to the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 as well as to the Barbados-Guyana EEZ Co-operation Treaty of 2003. Equally, Guyana referred to the Barbados-Guyana EEZ Co-operation Treaty of 2003 during the arbitral proceedings of 2007.
Part 3: Recent arbitral awards related to the Northeastern part of South America facing the Atlantic Ocean
3.1. Introduction

Following the EEZ-Co-operation Treaty of 2003, Barbados and Guyana have engaged proceedings against some of their neighboring States with a view to consolidating their respective claims in the Atlantic Ocean.\footnote{Trinidad and Tobago’s Counter-Memorial, \textit{op. cit.}, para. 70, p. 24. See also Barbados’ Reply, \textit{op.cit.}, para. 25, p. 11 and paras. 87-88, pp. 51-51. See also Guyana’s Memorial, Volume I, para. 2.14, p. 9, available on line at: \texttt{<http://www.pca-cpa.org/upload/files/Memorial%20of%20Guyana%20-%20Volume%20I.pdf>}. In its Memorial, Guyana asserted that: “[T]he Government of Guyana has a clear and pressing duty to seek to resolve our maritime differences with Suriname by every peaceful means. Fortunately, as the Government of Barbados has recently demonstrated in its maritime dispute with Trinidad and Tobago, such means are at hand in the form of procedures available under the United Nations Convention on the Law of the Sea to which both Guyana and Suriname are parties.” (para. 5.19, p. 71).}

Two and a half months after the signature of the Barbados-Guyana EEZ Co-operation Treaty in London (see Section 2.8.), Barbados initiated arbitration proceedings concerning its maritime boundary with Trinidad and Tobago.\footnote{Trinidad and Tobago’s Counter-Memorial, \textit{op. cit.}, para. 27, p. 10 and footnote 33.} The proceedings, which, in the view of Barbados, related to the delimitation of a single maritime boundary between the EEZ and the continental shelves appertaining to Barbados and Trinidad and Tobago respectively, were begun pursuant to Article 286 of UNCLOS and in accordance with Annex VII to UNCLOS.\footnote{See online: \texttt{<http://www.pca-cpa.org/upload/files/Final%20Award.pdf>}, para. 1.} As will be seen, one of the arguments presented by Barbados was that the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 was not opposable to it.\footnote{See Barbados’ Memorial, \textit{op. cit.}, para. 17, p. 7.} For its part, Trinidad and Tobago criticized the Barbados-Guyana EEZ Co-operation Treaty of 2003 since it would shelf-lock it.\footnote{See Trinidad and Tobago’s Counter-Memorial, \textit{op. cit.}, para. 26, p. 10. The purpose of the so-called “EEZ Co-operation” Treaty of 2003 would be to not only try to shelf-lock Trinidad and Tobago but also Venezuela, in a kind of “onion’s layers effect.”} Barbados and Trinidad and Tobago are both Parties to UNCLOS.

On 11 April 2006 an Arbitral Tribunal established the maritime boundary between Barbados and Trinidad and Tobago.
Only eight days after Barbados had initiated arbitration proceedings against Trinidad and Tobago, Guyana initiated arbitration proceedings concerning the delimitation of its maritime boundary with the Suriname as well as for alleged breaches of international law by Suriname in disputed maritime territory. Guyana brought these proceedings pursuant to Articles 286 and 287 of UNCLOS and in accordance with Annex VII to UNCLOS. Guyana and Suriname are both Parties to UNCLOS. Guyana, like Barbados, referred to the Barbados-Guyana EEZ Co-operation Treaty of 2003 in its Memorial.

On 17 September 2007 an Arbitral Tribunal established the maritime boundary between Guyana and Suriname.

This Part focuses on the facts, outcomes and analysis of the arbitral awards of 2006 and 2007 as well as their consequences on the claims for an ECS by the parties involved in those arbitral proceedings.

3.2. The arbitral award of 2006 (Barbados-Trinidad and Tobago)

Barbados initiated arbitration proceedings concerning its maritime boundary with Trinidad and Tobago in 2004. The proceedings related to the delimitation of a single maritime boundary between the EEZ and the continental shelves appertaining to Barbados and Trinidad and Tobago respectively. Barbados and Trinidad and Tobago (the “Parties”) ratified UNCLOS on 12 October 1993 and 25 April 1986, respectively.

3.2.1. Guyana’s request

Later in 2004, the Minister of Foreign Affairs of Guyana wrote to the President of the Tribunal and requested a copy of the Application and Statement of Claim by Barbados, together with copies of the written pleadings of both Parties, on the basis that it, as a
neighboring State, had an interest in the proceedings. The President of the Tribunal consulted with the Parties regarding Guyana’s request and subsequently responded that, based on the wishes of the Parties, the request could not be accepted.\textsuperscript{109}

In 2005, the President of the Tribunal received a letter from the Foreign Minister of Guyana providing information to the Tribunal regarding the outer limit of Guyana’s EEZ. The President responded to the Foreign Minister acknowledging his letter and noting that it had been brought to the attention of the members of the Tribunal.\textsuperscript{110}

\section*{3.2.2. Arguments of the Parties}

\subsection*{3.2.2.1. Barbados’ position}

Barbados requested the Tribunal to establish a single unified maritime boundary line, delimiting the EEZ and continental shelf between Barbados and Trinidad and Tobago, as provided under Articles 74 and 83 of UNCLOS.\textsuperscript{111}

Nevertheless, due to the existence of a “special circumstance”, Barbados requested the Tribunal to start the process of delimitation by drawing a provisional median line between the coasts of Barbados and Trinidad and Tobago and then to adjust it to accommodate the “traditional artisanal fishing activity of Barbadian fisherfolk” south of the median line, close to Tobago’s shores.\textsuperscript{112} One of the arguments presented by

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{109} Ibid. Paragraph 10. See comments regarding the unresolved land dispute between Venezuela and Guyana in Part 1, footnote 9 and the principle that “the land dominate the sea.” Barbados uses the same principle in its Reply, see Barbados’ Reply, \textit{op. cit.}, para. 50, p. 26. See also Trinidad and Tobago’s Rejoinder, \textit{op. cit.}, para. 197, p. 97 through which Trinidad and Tobago recognizes that there is a land territory dispute between Venezuela and Guyana over the Essequibo region. Even Barbados recognizes that there is a dispute between Venezuela and Guyana, labeling it as a “thorny territorial issues facing Guyana and Venezuela.” (Transcripts of Hearings, Day 2, p. 43, available online at: \texttt{<http://www.pca-cpa.org/upload/files/BTT\%202\%20final.pdf>.} Notwithstanding this recognition, Barbados states when explaining a map that: “The Venezuela-Guyana maritime boundary clearly is shown on this map and it comes from the termination point of the land territory.” (Transcripts of Hearings, Day 2, p. 48).
\item \textsuperscript{110} Ibid.
\item \textsuperscript{111} Ibid. Paragraph 57
\item \textsuperscript{112} Ibid. Paragraph 58
\end{itemize}
\end{footnotesize}
Barbados was that the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 was not opposable to it.\footnote{See Barbados’ Memorial, op. cit., para. 17, p. 7. For interpretation of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 see Barbados’ Reply, op. cit., para. 25, p. 11.}

\subsection*{3.2.2.2. Trinidad and Tobago’s position}

In its Counter-Memorial, Trinidad and Tobago divided the disputed area into two areas, namely, the Caribbean sector and the Atlantic sector. With regard to the Caribbean sector, Trinidad and Tobago was of the view that the delimitation boundary line should be the median line while in the Atlantic sector, because both States were in a position of, and analogous to, “adjacent States”, Trinidad and Tobago was entitled to a full maritime zone, including continental shelf.\footnote{Ibid. Paragraph 62. Trinidad and Tobago was requesting the Arbitral Tribunal to delimit, apart from the EEZ, the ECS. See also Libya/Malta, I.C.J. Reports 1985, p. 13. While Libya relied on the natural prolongation concept to defend its argument, Malta relied on the distance criterion. Paragraph 33: “In the view of the Court, even though the present case relates only to the delimitation of the continental shelf and not to that of the exclusive economic zone, the principles and rules underlying the latter concept cannot be left out of consideration. As the 1982 Convention demonstrates, the two institutions - continental shelf and exclusive economic zone – are linked together in modern law. Since the rights enjoyed by a State over its continental shelf would also be possessed by it over the seabed and subsoil of any exclusive economic zone which it might proclaim, one of the relevant circumstances to be taken into account for the delimitation of the continental shelf of a State is the legally permissible extent of the exclusive economic zone appertaining to that same State. This does not mean that the concept of the continental shelf has been absorbed by that of the exclusive economic zone; it does however signify that greater importance must be attributed to elements, such as distance from the Coast, which are common to both concepts.” See also paragraph 34 “It is in the Court’s view incontestable that, apart from those provisions, the institution of the exclusive economic zone, with its rule on entitlement by reason of distance, is shown by the practice of States to have become a part of customary law. Although the institutions of the continental shelf and the exclusive economic zone are different and distinct, the rights which the exclusive economic zone entails over the seabed of the zone are defined by reference to the régime laid down for the continental shelf. Although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf. It follows that, for juridical and practical reasons, the distance criterion must now apply to the continental shelf as well as to the exclusive economic zone; and this quite apart from the provision as to distance in paragraph 1 of Article 76. This is not to suggest that the idea of natural prolongation is now superseded by that of distance. What it does mean is that where the continental margin does not extend as far as 200 miles from the shore, natural prolongation, which in spite of its physical origins has throughout its history become more and more a complex and juridical concept, is in part defined by distance from the shore, irrespective of the physical nature of the intervening seabed and subsoil. The concepts of natural prolongation and distance are therefore not opposed but complementary; and both remain essential elements in the juridical concept of the continental shelf.”}
With regard to the respective continental shelves of the two States, Trinidad and Tobago claimed that they should be delimited by extension of a line extending to the outer limit of the continental shelf as determined in accordance with international law.\textsuperscript{115} Trinidad and Tobago also criticized the Barbados-Guyana EEZ Co-operation Treaty of 2003 since it would shelf-lock it.\textsuperscript{116}

\textbf{3.2.2.3. Barbados' reaction to Trinidad and Tobago's claim to an ECS}

Barbados objected that the claim of Trinidad and Tobago in respect of the extended continental shelf was beyond the scope of the dispute referred to the Tribunal.\textsuperscript{117}

In rejecting the request of Trinidad and Tobago of also delimiting the extended continental shelf, one of the arguments put forward by Barbados was that "any delimitation over the ECS beyond 200 M would affect the rights of the international community."\textsuperscript{118} In particular, according to Barbados, the delimitation of the outer

\textsuperscript{115}Ibid. Paragraph 63. See also: Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon), I.L.M., Vol. 3, p. 1149 (1992), p. 1172, paragraph 75: "The French Government, in its Memorial (at para. 146) indicates that from the available information concerning the profiles of the seabed in the area South of Saint Pierre and Miquelon, it appears ("il apparait") that the continental margin in that area extends beyond 200 nautical miles. Invoking Article 76, para. 4 a) ii) of the 1982 Convention on the Law of the Sea, France claims rights over the continental shelf beyond 200 miles, asserting that its shelf in the area extends as far as the outer edge of the continental margin. For these reasons the French Government requests the Court of Arbitration to decide that the lines of delimitation it establishes should be prolonged in order to delimit also the continental shelf of the parties beyond 200 nautical miles. The French Memorial adds that if the Court does not prolong the delimitation line at least as far as the Canadian 200 nautical miles line, then its decision would result in denying France right to a broad continental shelf extending as far as the outer edge of the continental margin (para. 321)."

\textsuperscript{116}See Trinidad and Tobago’s Counter-Memorial, \textit{op. cit.}, para. 26, p. 10. The purpose of the so-called “EEZ Co-operation” Treaty of 2003 would be to not only try to shelf-lock and zone-lock Trinidad and Tobago but also Venezuela in a kind of “onion’s layers effect.”

\textsuperscript{117}Ibid. Paragraph 65. See also paras. 80 and 81. See also: Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon), \textit{op. cit.}, para. 76: “On its part Canada, in its Counter Memorial states that although the continental shelf off Newfoundland generally extends beyond 200 nautical miles, the point which France is making its claim may, in fact, lie beyond the edge of that margin determined in accordance with Article 76 of the 1982 Convention on the Law of the Sea, so that there is no reasonable basis for the French claim. Canada adds that it does not accept the French assertion concerning the location of the outer edge of the continental margin and observes that France itself does not know the location of the outer edge of the margin, which is fundamental to its claim, as shown by the fact that it did not complete the lines of that claim in Map 16 of the French Memorial (C.M.C para. 68 and footnote 61).”

\textsuperscript{118}In contrast, see Barbados’s position in Part 2, section 2.8. of this paper regarding the Barbados-Guyana EEZ Co-operation Treaty of 2003 when dealing with a "single geological structure or field of non-living natural resources
continental shelf in the way proposed by Trinidad and Tobago would interfere with the core function of the CLCS.\(^{119}\)

Barbados further contended that Trinidad and Tobago was constrained in any case from reaching its full 200 M EEZ entitlement and any full potential ECS claim by the presence of Venezuela, Guyana, and Suriname. Barbados, for its part, was faced with claims from St. Lucia and France to its north and was constrained from reaching its full 200 M EEZ entitlement and any full ECS claim by the presence of Trinidad and Tobago, Venezuela, Guyana and Suriname.\(^{120}\) As will be seen in the Barbadian submission to the CLCS in Part 4, section 4.2., despite the fact of having expressly recognized that it was constrained from any full ECS claim by the presence of, \textit{inter alia}, Venezuela, Barbados did not consult with the latter before making its submission to the CLCS.\(^{121}\)

According to Barbados, Trinidad and Tobago could not claim a right to an ECS unless and until establishing that it was the relevant coastal State with an entitlement in accordance with Article 76 of UNCLOS. Barbados argued that in the area beyond the 200 M arc of Trinidad and Tobago but within the undisputed EEZ of Barbados, it enjoyed sovereign rights under UNCLOS, including rights in relation to the seabed and its subsoil, which would be lost in the event that the Tribunal recognized Trinidad and Tobago’s claim.\(^{122}\) This affirmation by Barbados of being able to satisfy the provisions of Article 76 of UNCLOS is applicable not only to Trinidad and Tobago but to any State claiming an ECS, including Barbados itself. Therefore, any coastal State making a that straddled the outer limit of the Co-operation Zone from the exclusive economic zone of either Party.” See also Barbados’ Reply, op. cit., para. 135, p. 76.

\(^{119}\) Ibid. Paragraph 82. For Barbados’ interpretation of the core function of the CLCS see its Reply, op. cit., para. 145, p. 81. See Article 9, Annex II, UNCLOS, and the relationship between the CLCS and the delimitation of boundaries between States. A tribunal can delimit an ECS, but not determine the outer limits of an ECS, which is the “core function” of the CLCS. In contrast, a tribunal cannot determine the outer limits of an ECS as the CLCS cannot delimit an ECS.

\(^{120}\) Ibid. Paragraph 157. See also Barbados’ Reply, op.cit., para. 1, p. 1. Barbados refers to a: “A map of Barbados and its neighbours”, which includes Venezuela. Map 1 of Barbados’ Reply is available online at: <http://www.pca-cpa.org/upload/files/Reply%20Map%20111.pdf>. See also Barbados’ Reply, para. 266, p.139. See also Transcripts of Hearings, Day 2, p. 72.

\(^{121}\) See Commission on the Limits of the Continental Shelf, “Rules of Procedure of the Commission on the Limits of the Continental Shelf, CLCS/40/REV. 1”, (hereafter: CLCS/40/REV. 1), Annex I, paragraph 2(a)

\(^{122}\) Ibid. Paragraph 179
submission to the CLCS should be able to demonstrate that, *inter alia*, it satisfies the test of appurtenance.\(^{123}\)

During the final submissions of the Parties, Barbados, for the reasons above mentioned, stated that the Tribunal had no jurisdiction over Trinidad and Tobago’s claim beyond 200 M.\(^{124}\)

3.2.2.4. Trinidad and Tobago’s reaction to Barbados’ rejection to delimit the ECS

With respect to Barbados’ arguments regarding the CLCS, Trinidad and Tobago acknowledged that under Article 76(8) of UNCLOS, the outer limit of the continental shelf was to be determined by processes that involved the CLCS. Trinidad and Tobago contended, however, that there was no overlap between the functions of the CLCS and the Tribunal by virtue of Article 76, as Trinidad and Tobago was asking for the establishment of a direction – an azimuth, not a terminus, while the CLCS’s concern was exclusively with the location of the outer limit of the shelf. Indeed, Trinidad and Tobago maintained that the CLCS had no competence in the matter of delimitation between adjacent coastal States and that competence was vested in a Tribunal duly constituted under Part XV of UNCLOS.\(^{125}\)

123 See CLCS/40/REV. 1, Annex III (Modus operandi), III. “Initial examination of the submission, paragraph 5. Preliminary analysis of the submission 1. The subcommission shall undertake a preliminary analysis of the submission in accordance with article 76 of the Convention and the Guidelines in order to determine: (a) If the test of appurtenance is satisfied by the coastal State; (b) Which portions of the outer limits of the continental shelf are determined by each of the formulae and constraint lines provided for in article 76 of the Convention and the Statement of Understanding.” See also Barbados’ Reply, para. 20, p. 9, whereby Barbados claims an ECS, not on the basis of geological and geomorphological features, but rather on “geography and international law.”

124 Ibid. Paragraph 186 (3)

125 Ibid. Paragraph 87

See also online: <http://daccessdds.un.org/doc/UNDQC/GEN/N08/309/23/PDF/N0830923.pdf?OpenElement>. See also: CLCS/40/REV. 1. Rule 46. See also online: <http://www.un.org/Depts/los/clcs_new/commission_documents.htm>. “Rule 46: Submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes 1. In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States or in other cases of unresolved land or maritime disputes, submissions may be made and shall be considered in accordance with Annex I to these Rules. 2. The actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between States.” “Annex I: Submissions in case of a dispute between States with
With respect to the area Trinidad and Tobago claimed beyond 200 M from its coast (i.e. beyond its EEZ), Trinidad and Tobago argued that pursuant to Articles 76(4)-(6) of UNCLOS, coastal States had an entitlement to the continental shelf out to the continental margin. In addition, with reference to the specific area beyond its EEZ, but within 200 M of Barbados, Trinidad and Tobago contended that, under general international law as well as under UNCLOS, claims to continental shelf were prior to claims to EEZ.\footnote{126}

For its part, Trinidad and Tobago held that the respective continental shelves of the two States were to be delimited by the extension of a line extending to the outer limit of the continental shelf in accordance with international law.\footnote{127}

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\footnote{126}{Ibid. Paragraph 174} \footnote{127}{Ibid. Paragraph 187(c)}
3.2.3. Reasoning of the Tribunal

3.2.3.1. Description of the area

The Arbitral Tribunal described the relevant geography of the disputed area in the following terms: “The islands of Trinidad and Tobago lie off the northeast coast of South America. At their closest, Trinidad and Venezuela are a little over 7 M apart.” The Tribunal, when establishing that the islands of Trinidad and Tobago were essentially the eastward extension of the Andean range of South America, further confirmed the linkage between South America and Trinidad and Tobago. According to the Tribunal, 70 M to the northwest started a chain of rugged volcanic islands known collectively as the Windward Islands, made up of Grenada, The Grenadines, St. Vincent, St. Lucia, Martinique, Dominica, and others. Barbados, affirmed the Tribunal, was not part of that chain of islands, but sited east of them. Collectively, all the aforementioned islands, and others that were farther north, made up the Lesser Antilles Islands. The Tribunal seems to have inferred, at least from the geological and geomorphological point of view that, unlike Trinidad and Tobago, Barbados was not linked to South America.

The Tribunal further reinforced the above-mentioned statement when it affirmed that Barbados consisted of a single island and was made up of a series of coral terraces resting on a sedimentary base. As will be seen in Section 4.2 below, this was probably the argument used by Barbados to justify its claim to an extended continental shelf when making its submission to the CLCS.

128 Ibid. Paragraph 42
129 Ibid. Paragraph 44
130 Ibid. Paragraph 42
131 Ibid. See also Dupuy, R.J. and Vignes, D. op. cit., p. 319: “The continental shelf “plataforma continental”, ("plataforma continental") is a direct prolongation of the continent under the sea, and its evolution during geological time is moreover linked to the successive rises and falls on the coastline due to eustatic changes in the sea.” As seen in Part 2, section 2.5., geological and geomorphological features, as oppose to distance, are essential elements to claim an ECS
132 Ibid. Paragraph 42
133 Ibid. See also Dupuy, R.J. and Vignes, D. op. cit., p. 319: “The transitional zone between the continental and oceanic lithosphere is known as the continental margin, and varies in breadth, in particular depending on whether the edge of the continental land mass in question meets the plate supporting it (as in the case of the Atlantic
The Tribunal also recognized Venezuela as a neighboring State on the Atlantic Ocean when describing the relevant geography of the disputed area in the following terms: “East of Trinidad and Tobago, the coast of South America trends in an east-southeasterly direction, first with part of the coast of Venezuela, then the coasts of Guyana, Suriname, and French Guiana. The Windward Islands lie as a string of islands in a south to north orientation starting directly north of the Boca del Dragon, the channel between the northwest corner of the island of Trinidad and the Peninsula de Paria of Venezuela.”

3.2.3.2. Jurisdiction of the Tribunal

The Tribunal considered that the dispute to be dealt with included the extended continental shelf, since (i) it either formed part of, or was sufficiently closely related to, the dispute submitted by Barbados, (ii) the record of the negotiations showed that it was part of the subject-matter on the table during those negotiations, and (iii) in any event, there was in law only a single “continental shelf” rather than an inner continental shelf and a separate extended or outer continental shelf. This affirmation by the Tribunal reinforces the importance of the test of appurtenance, the principle of continuity and its satisfaction by the coastal State making a submission to the CLCS.

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134 Ibid. Paragraph 45
135 Ibid. Paragraph 213. See also para. 217 (ii). In contrast to the Tribunal’s assertion of jurisdiction to delimit the ECS, see Barbados’ position in its Reply, op. cit., para. 138, p. 78. See also: Delimitation of Maritime Areas between Canada and the French Republic op. cit. para. 77: “There is a previous issue concerning the competence of this Court to pronounce on the discrepancy between the Parties as to whether the continental shelf at the relevant area extends beyond 200 miles. Under the Arbitration Agreement the Court has been requested “to carry out the delimitation as between the Parties of the maritime areas appertaining to France and those appertaining to Canada.”

136 See CLCS/40/REV. 1, Annex III, III, paragraph 5(1). See also CLCS/11, paragraph 8.5.3. See also United Nations, 2004, Outline of the training manual on the Preparation of a Submission on the Limits of the Continental Shelf, Module 2: “Introduction to article 76” (Part II), 26 February 2004, (hereafter CLCS/37) and CLCS, 2000, Basic flowchart for preparation of a submission of a coastal State to the Commission on the Limits of the Continental Shelf, adopted provisionally by the Commission at its Seventh session, New York, 1-5 May 2000.
Nevertheless, the Tribunal emphasized that its jurisdiction was limited to the dispute concerning the delimitation of maritime zones as between Barbados and Trinidad and Tobago. The Tribunal had no jurisdiction in respect of maritime boundaries between either of the Parties and any third State, and the Tribunal’s award did not prejudice the position of any State in respect of any such boundary.  

The Tribunal’s rationale differs greatly with that assumed by the Court of Arbitration for the delimitation of maritime areas between Canada and France (St. Pierre and Miquelon) of 1992 which held, inter alia, that any decision by that Court recognizing or rejecting any rights of the Parties over the continental shelf beyond 200 M would constitute a pronouncement involving a delimitation, not “between the Parties”, but between each one of them and the international community, represented by organs entrusted with the administration and protection of the international seabed Area (the seabed beyond national jurisdiction) that was declared to be the common heritage of mankind.

Unlike the Tribunal in the 2006 award, the Court in the St. Pierre and Miquelon case stated that it was not competent to carry out a delimitation which affected the rights of a Party which was not before it. In that connection, the Court noted that in accordance with Article 76(8) and Annex II of UNCLOS, a Commission was to set up, under the title of “Commission on the Limits of the Continental Shelf”, to consider the claims and data submitted by coastal States and issue recommendations to them. In conformity with that provision, only the “limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.” The Court went on to hold that obviously, a denial of a pronouncement on the French claim, based on the absence of a competence of the Court could not signify nor may be interpreted as prejudging,

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137 Ibid. Paragraph 218
138 Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon), op. cit., para. 78
139 Ibid. Paragraph 79
accepting of refusing the rights that may be claimed by France, or by Canada, to a continental shelf beyond 200 M. \(^{140}\)

### 3.2.3.3. Considerations of the maritime delimitation

The Tribunal found that the starting point of any delimitation was the entitlement of a State to a given maritime area, in this case, to an EEZ and a continental shelf. \(^{141}\)

The Tribunal held that at the time when the continental shelf was the principal national maritime area beyond the territorial sea, such entitlement founded its basis in the concept of natural prolongation. However, the subsequent emergence and consolidation of the EEZ meant that a new approach was introduced, based upon distance from the coast. \(^{142}\)

According to the Tribunal, the concept of distance as the basis of entitlement became increasingly intertwined with that of natural prolongation. Such a close interconnection was paramount in the definition of the continental shelf under Article 76 of UNCLOS, where the two concepts were assigned complementary roles. That same interconnection became evident in the regime of the EEZ under UNCLOS Article 56, distance being the sole basis of the coastal State’s entitlement to both the seabed and subsoil and the superjacent waters. \(^{143}\) Despite this affirmation, and similarly to the Barbados-Guyana EEZ Co-operation Treaty of 2003 (see Section 2.8.), the Tribunal

\(^{140}\) Ibid. Paragraph 80

\(^{141}\) Ibid. Paragraph 224

\(^{142}\) Ibid. See Libya/Malta, op. cit., para. 39, p. 13. “The Court however considers that since the development of the law enables a State to claim that the continental shelf appertaining to it extends up to as far as 200 miles from its coast, whatever the geological characteristics of the corresponding seabed and subsoil, there is no reason to ascribe any role to geological or geophysical factors within that distance either in verifying the legal title of the States concerned or in proceeding to a delimitation as between their claims. This is especially clear where verification of the validity of title is concerned, since, at least in so far as those areas are situated at a distance of under 200 miles from the coasts in question, title depends solely on the distance from the coasts of the claimant States of any areas of seabed claimed by way of continental shelf, and the geological or geomorphological characteristics of those areas are completely immaterial.”

\(^{143}\) Ibid. Paragraph 225. See also Continental Shelf (Tunisia/Libya), Judgment, I.C.J. Reports 1982, p. 18, para. 50: “For the present, the Court notes that the new text (Article 76) does not affect the role of the concept of natural prolongation in this domain.”
omits the content of Article 56(3) that establishes: “The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI” (Continental Shelf).\footnote{Dupuy, R.J. and Vignes, D. \textit{op. cit.}, p. 339: “The continental shelf is now subject to a twofold definition. Nevertheless, it should be recognized that the 200-mile criterion only plays an ancillary role. The continental shelf, irrespective of whether it does not extend up to that distance or extends beyond it, corresponds primarily to the continental margin as the submerged extension of the land mass. We are admittedly confronted with two concepts of the continental shelf; however, the term “natural” is of prime importance, and the other “legally artificial one, extending beyond the prolongation of the land mass but stopping at the 200-mile limit.” Is only of secondary importance, since the second criterion of article 76, as Judge Evensen stressed, was “a corollary to the provisions laid down in Articles 55-57 on the 200-mile Exclusive Economic Zone” (ICJ Reports 1982, p. 286). It is the continental shelf which has subsumed the sea-bed of the exclusive economic zone, and not the other way around.” See also Churchill R.R. and Lowe A.V. \textit{op.cit.}, p. 145: “While the doctrine of the continental shelf has not itself weakened, a certain amount of duplication and possible confusion arose with the emergence of the concept of the 200-mile exclusive economic zone (EEZ) at UNCLOS III...under the Law of the Sea Convention the coastal State has sovereign rights over all the natural resources of its EEZ, including the seabed resources (LOS Convention (“UNCLOS”), art. 56). There are, accordingly, now two distinct legal bases for coastal State rights in relation to the sea bed. The first is the classical doctrine of the continental shelf, as formulated in the Continental Shelf Convention and in custom international law, and as preserved in Part VI of the 1982 Law of the Sea Convention. The second is the newer concept of the EEZ, which is set out in Part V of the 1982 Convention and,...is also now established custom international law. It is important to keep these two bases separate. Their origins are quite different, and, while they will usually apply concurrently to the same geographical area, this is by no means always the case. The EEZ has a breadth of 200 miles, which may be greater or less that the breadth of the ‘physical’ continental shelf under the classical doctrine, although under the Law of the Sea Convention the minimum breadth of the continental shelf is 200 miles, and thus not less than the EEZ. It should be also borne in mind that while a continental shelf exists \textit{ipso facto} and \textit{ab initio} and therefore need not to be claimed, an EEZ must always be claimed so that, as the International Court recognised in the \textit{Libya/Malta Continental Shelf} case, there can be a continental shelf without an EEZ but there cannot be an EEZ without a continental shelf. And although the continental shelf and EEZ represent different bases for rights to the sea bed, the Law of the Sea Convention does provide, in article 56(3) in Part V, that the EEZ sea-bed sovereign rights are ‘exercised in accordance with’ the provisions of Part VI of the Convention, concerning the continental shelf.” See also Trinidad and Tobago’s Counter-Memorial, \textit{op. cit.}, paras. 277 and 278, p. 9 as well as para 285, p. 100. In contrast, for a peculiar interpretation of article 56(3) see Barbados’ Reply, \textit{op. cit.}, para. 148, p. 82.}

Consequently, it is worth reminding that, when referring to the natural prolongation of its land territory, Article 76(1) of UNCLOS does not make any distinction between the part of the continental shelf located within 200 M and that part located beyond 200 M.\footnote{Article 76, paragraph 1, UNCLOS. See also Continental Shelf (Tunisia/Libya), Judgment, I.C.J. Reports 1982, p. 18, para. 47: “According to the first part of paragraph 1 (of Article 76) the natural prolongation of the land territory is the main criterion. In the second part of the paragraph, the distance of 200 nautical miles is in certain circumstances the basis of the title of a coastal State. The legal concept of the continental shelf as based on the “species of platform” has thus been modified by this criterion. The definition in Article 76, paragraph 1, also discards the exploitability test which is an element in the definition of the Geneva Convention of 1958.”} This assertion is further reinforced by paragraph 4(a) of the same Article that suggests the
formulation of a test of appurtenance to entitle a coastal State to extend the outer limits of the continental shelf beyond the limit set by the 200 M distance criterion.\textsuperscript{146}

The Tribunal also affirmed that, in spite of some early doubt about the continuing existence of the concept of the continental shelf within an area appertaining to the coastal State by virtue of its entitlement to an EEZ, it became clear that the latter did not absorb the former and that both coexisted with significant elements in common arising from the fact that, within 200 M from a State’s baselines, distance was the basis for the entitlement to each of them.\textsuperscript{147}

The Tribunal did not examine what would happen if one of the Parties was not in a position to establish the outer limits of its continental shelf beyond 200 M. Having reached the 200 M based on the distance criterion, what would happen if that Party was unable to prove the absence of interruption of its natural prolongation between the 200 M and the outer limits of the continental shelf?\textsuperscript{148}

\textsuperscript{146} See CLCS/11, para. 2.1.2. See also Dupuy, R.J. and Vignes, D. \textit{op. cit.}, p. 339: “The concept of natural prolongation and equating this concept to the continental shelf are no longer a source of ‘unjustified inequality’ since this was counterbalanced in two ways; by the establishment of the concept of the exclusive economic zone which encompasses the sea-bed up to 200 miles whatever its geomorphological or geological nature, and the establishment of revenue-sharing from exploitation of the shelf beyond 200 miles. On the other hand, the concept of natural prolongation in its geomorphological and geological meaning has gradually been felt not so much as a privileged instrument of national appropriation – which it has undoubtedly been, ...but rather as a means of drastically and definitively restricting the seaward expansion of the jurisdiction of the coastal State over the sea-bed, in that it allows the will of the coastal State to be subordinated to the objective existence of a physical reality.”

\textsuperscript{147} Ibid. Paragraph 226

\textsuperscript{148} See Dupuy, R.J. and Vignes, D. \textit{op. cit.}, p. 344: “For this reason, the Court decided that: “the area of continental shelf to be found to appertain to either Party, not exceeding more than 200 miles from the coast of the Party concerned, no criterion for delimitation of shelf areas can be derived from the principle of natural prolongation in the physical sense” (ICJ Reports 1985, p. 57). Such an approach would lead to the crystallization of a dichotomy in the institution of the continental shelf. To take the words of Judge Oda in his dissenting opinion, there would be then the inner continental shelf and an outer continental shelf. But even when acknowledging that “the distance criterion has replaced that of geomorphology in all respects save in regard to the outer continental shelf between 200-mile and 350-mile limits”, one may share Judge’s Oda concern about if “the Court has realized that, by stating that international law has already developed to that stage, it has added weight to the second of the alternative definitions in Article 76 and, in effect, replaced with minor premise (distance) what some jurists may still regard as the major premise (physical prolongation)” (Ibid., p.157, para. 61). Should such a trend prevail, it would be rather difficult to avoid the serious consequences of leaving thus aside the objective of guaranteeing that the seaward claims of coastal States, at least regarding the sea-bed, should maintain an objective link to physical reality. The weakening of the concept of natural prolongation and the stress put on the distance criterion, introduces necessarily an element of uncertainty and cannot but increase the possibilities of a creeping jurisdiction.”
Despite the fact that the Tribunal expressly recognized the principle that delimitation should avoid the encroachment by one party on the natural prolongation of the other,\textsuperscript{149} it did not consider geological and geomorphological features (scientific and technical criteria) to delimit the respective continental shelves of the Parties, as it did not give any weight to the concept of natural prolongation. The Tribunal supported its view affirming that, with very few exceptions, the quest for neutral criteria of a geographical character prevailed in the end over area-specific criteria such as geomorphological aspects.\textsuperscript{150}

The Tribunal reinforced its preference of relying on geographical considerations, particularly with regard to the length and the configuration of the respective coastlines and their characterization, while affirming that the criteria of the continental shelf had not been abandoned. The Tribunal justified this assertion by indicating that both the continental shelf and the EEZ, were relevant constitutive elements integrated in the process of delimitation as a whole, particularly where it entailed the determination of a single maritime boundary.\textsuperscript{151} Despite the fact that the Tribunal recognized that its jurisdiction included the delimitation of the maritime boundary in relation to that part of the continental shelf extending beyond 200 M, the award does not make any express reference to it or to any geological or geomorphological features taken into account by the Tribunal to justify its decision.\textsuperscript{152}

\textsuperscript{149}Ibid. Paragraph 232
\textsuperscript{150}Ibid. Paragraph 228. See in contrast: Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon), \textit{op. cit.}, para. 81: “The disagreement between the Parties concerning the factual situation, namely, whether at the relevant location the geological and geomorphological data make Article 76(4) applicable or not, was not elucidated during the oral proceedings. This deficiency strengthens the Court’s decision to abstain from pronouncing on the substance of the matter. It is not possible for a tribunal to reach a decision by assuming hypothetically the eventuality that such rights will in fact exist. The French Memorial rightly states in a different context that “il est sur que le Tribunal ne peut tabler sur des actes futurs au contenu et a la date inconnus de lui’ (MF para. 47). See also the importance given by the CIJ to the “principle of continuity” (CLCS/11, paragraph 8.5.3.) in the Continental Shelf (Tunisia/Lybia), Judgment, I.C.J. Reports 1982, para. 80, p. 18: “The principal feature which could, in the Court’s view be taken into account as a relevant circumstance is the Tripolitanian Furrow. As has been shown, it is not such a significant feature that it interrupts the continuity of the Pelagian Block as the common natural prolongation of the territory of both Parties, so as to amount to a “natural submarine frontier”.”
\textsuperscript{151}Ibid. Paragraph 233
\textsuperscript{152}In contrast, see Libya/Malta, \textit{op.cit.}, para 79, p. 13. The Court found that “(2) the area of continental shelf to be found to appertain to either Party not extending more than 200 miles from the coast of the Party concerned, no criterion for delimitation of shelf areas can be derived from the principle of natural prolongation in the physical sense.”
3.2.3.4. Delimitation in the East or Atlantic sector

The Tribunal decided that in the east (also known as the Atlantic sector) it would determine a single boundary line for the delimitation of both the continental shelf and the EEZ, to the extent of the overlapping claims, without prejudice to the question of the separate legal existence of the EEZ and the continental shelf.\textsuperscript{153} It is unclear what the Tribunal could have meant with this expression. Previously in the award, the Tribunal referred to “Trinidad and Tobago’s submission [of] the need for a separate boundary line [that] appears to be associated with its claim over the outer continental shelf beyond its 200-mile area.”\textsuperscript{154}

The Tribunal did not find the distinction between the “Caribbean sector” and the “Atlantic sector” persuasive in the light of the geographical characteristics of the disputed area.\textsuperscript{155}

With this statement, the Tribunal seems to have neglected that, unlike in the “Caribbean sector”, in the “Atlantic sector” the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990\textsuperscript{156} was in force, as well as the ongoing Good Offices process led by the UN Secretary-General pursuant to the Agreement to resolve the controversy between Venezuela and British Guiana of 1966. An award was also pending in the Guyana-Suriname arbitration.

\textsuperscript{153} Ibid. Paragraph 298
\textsuperscript{154} Ibid. Paragraph 297. In its Counter-Memorial, Trinidad and Tobago clearly and expressly claims a continental shelf “beyond 200 n.m.” in the Atlantic sector (op. cit., para. 59(4), p. 21).
\textsuperscript{155} Ibid. Paragraph 313
\textsuperscript{156} See paragraphs 346 and 349. The Tribunal limits itself to state that the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 is \textit{res inter alios acta}, without further analysis. Moreover, the Tribunal established virtually a strict equidistance line in the east or Atlantic sector thus rejecting considerations agreed by some States in the region through bilateral treaties (Dominica-France and Venezuela-Trinidad and Tobago). The last point of the award, Point 11, intercepts the maritime boundary line of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 between Point 21 and Point 22. The Tribunal might have decided to fix Point 11 where it did after having taken into account Barbados’ comments in the sense that Barbados’s claims to the south of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 would be a dispute between Barbados and Venezuela and not between Barbados and Trinidad and Tobago. According to Barbados, that would be another matter since “Barbados and Venezuela can fight that out if they wish.” (see Transcripts of Hearings, Day 7, pp. 25-26). As regards the Barbados-Guyana EEZ Co-operation Treaty of 2003, the Tribunal evidently establishes that it is \textit{res inter alios acta}.
Furthermore, the reasoning of the Tribunal does not take into account what was held in the Arbitration for the delimitation of the maritime boundary between Guinea and Guinea-Bissau that established that a delimitation designed to obtain an equitable result cannot ignore the other delimitations already made or still to be made in the region (see Section 2.6.).

The Tribunal in that case also held that, in order for the delimitation to be suitable for equitable integration into the existing delimitations as well as into future delimitations which would be reasonable to imagine from a consideration of equitable principles and the most likely assumptions, it was necessary to consider how all those delimitations fitted in with the general configuration of the coastline.\(^{157}\)

Additionally, unlike the “Caribbean sector”, other States of that region could potentially claim an ECS. This is particular relevant in light of the Tribunal’s own affirmation that it had no jurisdiction in respect of maritime boundaries between either of the Parties and any third State.

3.2.3.5. Trinidad and Tobago’s claim to an ECS

Finally, with regard to the claim of Trinidad and Tobago to an extended continental shelf, the Tribunal concluded that the single maritime boundary was such that, as between Barbados and Trinidad and Tobago, there was no single maritime boundary beyond 200 M. The problems posed by the relationship in that maritime area of continental shelf and EEZ rights were accordingly problems with which the Tribunal had no need to deal. The Tribunal therefore took no position on the substance of the problem posed by the argument advanced by Trinidad and Tobago.\(^{158}\) Figure 7

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\(^{157}\) See also Arbitration Tribunal for the Delimitation of a Maritime Boundary between Guinea and Guinea-Bissau, op. cit., para. 93.

\(^{158}\) Ibid. Paragraph 368. See in contrast the explanation given by the Court in the case of the Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon), op. cit., para. 82: “It follows from the above considerations that this court is only competent to effect a delimitation reaching as far as the 200 nautical miles outer limit, which is the single delimitation applicable simultaneously both to the exclusive economic zone and to the normal continental shelf of the Parties, that is to say, the shelf which is not extended under Article
illustrates the Decision Line of the arbitral award of 2006 (Barbados-Trinidad and Tobago).

76 (4) of the 1982 Convention. In closing at the 200 nautical miles outer limit the two parallel lines conforming the seaward projection towards the south of the coastal opening of Saint Pierre and Miquelon, the Court is complying strictly with the 1989 Agreement, which enjoins it to “establish a single delimitation which shall govern all rights of jurisdiction which the Parties may exercise under international law in these maritime areas.” This provision mandates a single maritime line that would apply both to the seabed and the superjacent waters in the area subject to the delimitation.” See also: Continental Shelf (Tunisia/Libya), op. cit., para. 60, p. 18: “Thus the Court is in effect invited to choose between two interpretations of “natural prolongation” as a geological concept which in fact highlight two aspects of geology as a science.”
Figure 7 Map showing the Decision Line of the arbitral award of 2006 (Barbados-Trinidad and Tobago)

As will be seen below in Section 4.6., referring to the submission made by Trinidad and Tobago to the CLCS in 2009, it is important to highlight the ICJ judgment on the
Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea Case, delivered the year after the arbitral award of 2006. Similarly to the St. Pierre and Miquelon case of 1992, the ICJ judgment underscored that:

It should also be noted in this regard that in no case may the line be interpreted as extending more than 200 nautical miles from the baselines from which the breadth of the territorial sea is measured; any claim of continental shelf rights beyond 200 miles must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder.

Figure 8 illustrates Decision Line of the arbitral award of 2006 (Barbados-Trinidad and Tobago) in the context of the Study Area.

![Figure 8 Map showing the Decision Line of the arbitral award of 2006 (Barbados-Trinidad and Tobago) in the context of the Study Area.](http://earth.google.com/)

Source: Adapted by Author from Google Earth, 2009. This map is for illustrative purposes only.

3.3. The arbitral award of 2007 (Guyana-Suriname)

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159 Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea, I.C.J. Reports 2007
Like Barbados, Guyana initiated arbitration proceedings in 2004 concerning the delimitation of its maritime boundary with Suriname as well as issues relating to alleged breaches of international law by Suriname in disputed maritime territory. Guyana and Suriname ratified UNCLOS on 16 November 1993 and 9 July 1998, respectively.  

3.3.1. Arguments of the Parties

3.3.1.1. Guyana’s position

Guyana requested, *inter alia*, that from the point known as Point 61,  

the single maritime boundary which divided the territorial seas and maritime jurisdictions of Guyana and Suriname followed a line of 34° east and true north for a distance of 200 M. Additionally, in its Memorial Guyana, like Barbados, referred to the Barbados-Guyana EEZ Co-operation Treaty of 2003.

Guyana also stated that geological factors were of no material relevance to the case since there was no reason to ascribe any role to geological or geophysical factors in delimitations within a 200 M range from the coast. Therefore, Guyana reserved its rights in respect of any delimitation of the continental shelf beyond 200 M limit. According to Guyana, its coastline measured 482 kilometers along the low-water line

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160 See online: <http://www.pca-cpa.org/upload/files/Guyana-Suriname%20Award.pdf>. Paragraph 1  
161 Ibid. Paragraph 157(2): “In 1936, the Mixed Boundary Commission made its recommendation that the northern end of the border between the British Guiana and Suriname should be fixed at a specific point on the west bank of the Corentyne River, near the to the mouth of the river, a point then referred to as “Point 61” of the “1936 Point.” The rationale for locating the border along the western bank of the Corentyne River rather than its thalweg and locating the border terminus on the western bank was to enable the Netherlands to exercise supervision of all traffic in the river.”

162 Ibid.


from the land boundary terminus with Venezuela to the land boundary terminus with Suriname (at Point 61).\textsuperscript{166}

\subsection*{3.3.1.2. Suriname’s position}

In its Counter-Memorial, Suriname requested the Tribunal to, \emph{inter alia}, determine that the single maritime boundary between Suriname and Guyana extended from the 1936 Point\textsuperscript{167} as a line of 10° east of true north to its intersection with the 200 M limit measured from the baseline from which the breadth of Suriname’s territorial sea was measured.\textsuperscript{168}

Suriname agreed with Guyana’s position of requesting the Tribunal to stop the single maritime boundary at a point where it first reached the 200 M from the baselines of one of the Parties.\textsuperscript{169} Suriname also agreed with Guyana that geological factors were of no material relevance to the case insofar as they pertained to delimitations within the 200 M zone.\textsuperscript{170} As regards the relevant coastline, Suriname pointed out that Guyana’s sovereignty over the land west of the Essequibo River was disputed by Venezuela.\textsuperscript{171}

\subsection*{3.3.1.3. Guyana’s reaction to Suriname’s position}

With regard to the role of coastal geography, in Guyana’s view, its relevant coastline was modestly concave and Suriname’s was convex. Guyana also contended that the

\begin{footnotes}
\item[166] See Guyana’s Memorial, Volume I, \textit{op. cit.}, para. 8.34, p. 100. Despite this affirmation, it is worth highlighting the fact that Guyana did not refer either to the 1966 Geneva Agreement nor to the ongoing process of Good Offices led by the Secretary-General of the UN aim at solving the land dispute between Venezuela and Guyana. For more information on the unresolved land dispute between Venezuela and Guyana see Press release 106/2007 (12 May 2007) Communiqué issued at the conclusion of the Tenth Meeting of the Council for Foreign and Community Relations (COFCOR), 10-11 MAY 2007, Belize City, Belize, available at the Caribbean Community (CARICOM) Secretariat webpage: \url{<http://www.caricom.org/jsp/pressreleases/pres106_07.jsp>}. According to the Communiqué: “They noted the endeavours being made by the two countries within the ambit of the Geneva Agreement to find a means of settlement of the controversy that arose from the Venezuelan contention that the 1899 Arbitral Award is null and void.”
\item[167] Ibid. Paragraph 137. For explanation of the 1936 Point see footnote 161 above.
\item[168] Ibid. Paragraph 161 (2.8)
\item[169] See Suriname’s Counter Memorial, Chapter 2, \textit{op. cit.}, paras 2.3, 2.4 and 2.5, p. 6.
\item[170] Ibid, para 2.6, p. 7 and footnote 22 of the Counter-Memorial.
\item[171] Ibid, Chapter 6, \textit{op. cit.}, para. 6.23, p. 98. See also para 6.11 and Chapter 7, para. 7.36, p. 115.
\end{footnotes}
relevant coastal configurations and lengths presented by Suriname were inaccurate due to the exclusion of relevant basepoints further west on the Guyana coast and the “inaccurate” contention that the coastline west of the Essequibo River was disputed by Venezuela. In this connection, Guyana clarified that its land boundary with Venezuela was fixed in 1899 by a competent international arbitral tribunal and as a member of CARICOM, Suriname itself repeatedly confirmed its full support of Guyana’s sovereignty over this territory. However, Guyana did not refer to the ongoing process of Good Offices led by the Secretary-General of the UN in pursuit of the agreement to resolve the controversy over the frontier between Venezuela and British Guiana of 1966. Consequently, it ignored the principle that “the land dominates the sea.”

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172 See Guyana’s Reply, available online at: <http://www.pca-cpa.org/upload/files/GUYANA%20Reply%20brief%20volume%201.pdf>, para. 1.27, p. 10. Guyana is referring to the Award of 3 October 1899 of the Arbitral Tribunal delimiting the land boundary between the Colony of British Guiana and the United States of Venezuela. The Award was the result of the Arbitral Tribunal established according to Article I of the Treaty of Arbitration signed at Washington on 2 February 1897 between Great Britain and the United States of Venezuela (3 October 1899). See RG, Vol. II, Annex R21. According to Guyana’s Reply: “The award has not been set aside or vacated or replaced by any other binding legal obligation.” Despite this affirmation, Guyana does not refer to the Agreement to Resolve the Controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the Frontier between Venezuela and British Guiana, signed in Geneva on 17 February 1966 (also known as the 1966 Geneva Agreement or simply the Geneva Agreement). According to Article I of the 1966 Geneva Agreement, its object is to seek satisfactory solutions for the practical settlement of the controversy between Venezuela and the United Kingdom. Article V(2) establishes that no acts or activities taking place while the Agreement is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty or create any rights of sovereignty in those territories.

173 Ibid. Paragraph 224

174 See Guyana’s Reply, op. cit., 3.29, p. 44. Ironically, Guyana fails to take account of the 1966 Geneva Agreement when it affirms: “It is axiomatic that “the land dominates the sea” and that sovereignty over the landmass, including the “the maritime front of this landmass,” is what generates a coastal State’s claim to the maritime area appurtenant to its coastline.” With reference to the principle that “the land dominates the sea”, see comments made in Part 1, footnote 9 as well as in Part 3 regarding the arbitral award of 2006 (Barbados-Trinidad and Tobago), footnote 109. For a recognition by Guyana of a territorial controversy with Venezuela see, inter alia, Statement on the Guyana-Venezuela relations issued by the Heads of Governments of the Caribbean Community (CARICOM) and Canada at their Sixth Summit Meeting in Montego Bay, Jamaica, 19 January 2001 (Press release 18/2001) (23 January 2001) “Heads of Government of CARICOM and Canada, at their Sixth Summit Meeting in Montego Bay, Jamaica on January 19, 2001, were briefed by the Government of Guyana on the controversy between Guyana and Venezuela. The Heads of Government noted that the Government of Venezuela continued to make claims to Guyana’s territory. They further noted that the two countries were committed to finding a peaceful resolution to the controversy under the 1966 Geneva Agreement and that both Guyana and Venezuela have expressed a desire for the continuation of the Good Officer Process of the United Nations Secretary General. The Heads of Government of CARICOM and Canada encouraged both Parties not to undertake any unilateral actions which could undermine the relations between the two countries. Heads of Government reiterated their support for the sovereignty and territorial integrity of Guyana and encouraged continued dialogue between Guyana and Venezuela for a peaceful resolution of the controversy.” See online: <http://www.caricom.org/pressreleases/pres18_01.htm> See also: Assembly of Caribbean Community Parliamentarians. Resolution on Guyana-Venezuela Relations, 15 October 1999, see online:
3.3.1.4. Suriname’s reaction to Guyana’s position

For its part, Suriname asserted that, when plotting a boundary based on the equidistance method in this case, micro-geography of the coastal configurations gave rise to unwanted distortions. For Suriname, the equidistance method was overly reliant on micro-geography, rather than dominant coastal features, and criticized for that reason. Suriname therefore preferred the determination of relevant coasts, in order to avoid what it considered to be distortions caused by the use of coastal baselines.\(^{175}\)

According to Suriname, the section of its provisional equidistance line nearer to the coast cut across the coastal front of Suriname due to the effect of a coastal convexity on the western side of the mouth of the Corantijn River, and a concavity on the east side exaggerated this effect. This was an example of the undue influence of coastal irregularities that made the case against equidistance delimitation.\(^{176}\)

Suriname argued that a provisional equidistance line excessively “cut off” the maritime area abutting Suriname’s coast in breach of the “non-encroachment” principle, particularly with respect to the first section of the line (to shortly beyond the 200-metre isobath) due to the effect of convexities and concavities.\(^{177}\) As regards the Guyanese argument that an arbitral tribunal had fixed in 1899 the land boundary between Venezuela and Guyana, Suriname pointed out the undisputable fact that a portion of the coast of Guyana was also claimed by Venezuela. According to Suriname, that portion of the coast was not relevant to a maritime delimitation between Guyana and Suriname.\(^{178}\)

Suriname also referred to Guyanese oil concessions covering an extensive area of

\(^{175}\) Ibid. Paragraph 227
\(^{176}\) Ibid. Paragraph 229
\(^{177}\) Ibid. Paragraph 259
deep-water acreage stretching from disputed areas with Venezuela in the west to the area in dispute with Suriname in the east.\textsuperscript{179}

\section*{3.3.2. Reasoning of the Tribunal}

\subsection*{3.3.2.1. Description of the area}

The Tribunal described the relevant geography of the disputed area in the following terms: “Guyana and Suriname are situated on the northeast coast of the South American continent and are separated by the Corentyne (in Dutch, Corantijn) River, which flows northwards into the Atlantic Ocean.”\textsuperscript{180}

According to the Tribunal, the coastlines of Guyana and Suriname were adjacent. They met at or near to the mouth of the Corentyne River and together formed a wide and irregular concavity. There were no islands in Guyana and Suriname’s territorial seas.\textsuperscript{181} Neither Guyana nor Suriname had signed international maritime boundary agreements with their neighboring States.\textsuperscript{182}

The seafloor off the coasts of Guyana and Suriname consisted of soft mud out to the 20 metre depth contour and was constantly subjected to erosion and accretion. The horizontal distance between the high water line and the low water line, i.e. the area of tidal flats, low tide elevations and drying areas, was as much as 3 M in several places along both coasts. The seafloor did not attain a 50-metre depth contour (25 fathoms) until about 50 M offshore, and did not attain a 200-metre depth contour (often considered the geological continental shelf break) until 80 M offshore.\textsuperscript{183}

\textsuperscript{179} See Suriname’s Rejoinder, \textit{op. cit.}, Chapter 5, para. 5.42, p. 80.
\textsuperscript{180} Ibid. Paragraph 127
\textsuperscript{181} Ibid. Paragraph 130
\textsuperscript{182} Ibid. Paragraph 131
\textsuperscript{183} Ibid. Paragraph 133
3.3.2.2. Jurisdiction of the Tribunal

The Tribunal found that, despite Suriname’s jurisdictional objection with respect to Guyana’s maritime delimitation claim, it had jurisdiction to delimit the maritime boundary in dispute between the Parties. 184

3.3.2.3. Considerations of the maritime delimitation

With regard to the delimitation of the continental shelf and the EEZ, the Tribunal reminded that both Guyana and Suriname were Parties to UNCLOS and, therefore, they were bound by the relevant provisions of UNCLOS and especially by articles concerning the delimitation of those maritime areas. 185

The Tribunal went on to affirm that it was particularly important to note that it had to determine a single maritime boundary delimiting both the continental shelf and the EEZ. According to the Tribunal, these regimes were separate, but to avoid the difficult practical problems that could arise were one Party to have rights over the water column and the other rights over the seabed and subsoil below that water column, a single maritime boundary could be drawn. With this assertion, and unlike the Tribunal that established the maritime boundary between Barbados and Trinidad and Tobago in 2006, the Tribunal clearly reinforced the relevance of the concept of the natural prolongation of the land territory with regard to the continental shelf. The Tribunal further stated that it was generally acknowledged that the concept of the single maritime

\[\text{\textsuperscript{184}}\text{Ibid. Paragraph 280}\]
\[\text{\textsuperscript{185}}\text{Ibid. Paragraph 330. See Articles 15, 74 and 83, UNCLOS. Most of the countries located in the northeast part of South America and the Caribbean facing the Atlantic Ocean, in other words, Barbados, Trinidad and Tobago, Guyana and Suriname, with the exception of Venezuela, are States Parties to UNCLOS. See Status of the Convention and the Agreements online at: }<\text{http://www.un.org/Depts/los/convention_agreements/convention_agreements.htm}>\text{. See also Tunisia/Libya, Judgment, op. cit., para. 50, p. 18: “Emphasis is placed on the equitable solution which has to be achieved. The principles and rules applicable to the delimitation of continental shelf areas are those which are appropriate to bring about an equitable result.”}\]
boundary did not have its origin in UNCLOS but was squarely based on State practice and the law as developed by international courts and tribunals.\textsuperscript{186}

The Tribunal concluded that it did not have to consider any relevant circumstances in the continental shelf or EEZ that would require an adjustment to the provisional equidistance line. There were no factors, in its view, which would render the equidistance line determined by the Tribunal inequitable.\textsuperscript{187} Figure 9 illustrates the Tribunal's delimitation of the maritime boundary in the arbitral award of 2007 (Guyana-Suriname).

### 3.3.2.4. Delimitation of the CS

With regard to the continental shelf, the Tribunal noted that it was not invited to delimit maritime areas beyond 200 M from the baselines of Guyana and Suriname. Both Parties reserved their rights under Article 76(4) of UNCLOS. Thus, in this arbitration, and unlike the arbitration between Barbados and Trinidad and Tobago in 2006, the Tribunal was not concerned with matters regarding the delimitation of the outer continental shelf of the Parties.\textsuperscript{188}

Furthermore, the Tribunal indicated that the Parties themselves had agreed that geological or geophysical factors were of no relevance in this case.\textsuperscript{189} This is a major difference between this award and the arbitral award of 2006 (Barbados-Trinidad and Tobago). While in the award of 2007 both Parties indicated that those factors were irrelevant to establish the maritime boundary, in the award of 2006 it appears that neither of the Parties argued on the basis of geology and geomorphology. The Tribunal, in the award of 2006, was therefore not required to make any pronouncement on those aspects.

\textsuperscript{186} Ibid. Paragraph 334
\textsuperscript{187} Ibid. Paragraph 392
\textsuperscript{188} Ibid. Paragraph 353. See paras. 213 and 217 (ii) of the arbitral award of 2006 (Barbados-Trinidad and Tobago).
\textsuperscript{189} Ibid. Paragraph 354
Figure 9 Map showing the Tribunal’s Delimitation of the Maritime Boundary in the arbitral award of 2007 (Guyana-Suriname)


Figure 10 illustrates the Tribunal’s Delimitation of the Maritime Boundary in the arbitral award of 2007 (Guyana-Suriname) in the context of the Study Area.
Figure 10 Map showing the Tribunal’s Delimitation of the Maritime Boundary in the arbitral award of 2007 (Guyana-Suriname) in the context of the Study Area
Source: Adapted by Author from Google Earth, 2009 (http://earth.google.com/). This map is for illustrative purposes only.

3.4. Conclusion

The awards of 2006 and 2007 are particularly interesting in light of the subsequent submissions made to the CLCS by all the Parties involved in those arbitrations. In particular, it is worth bearing in mind that during the arbitration process of 2006 (Barbados-Trinidad and Tobago), the legal counsel for Barbados alleged that, for its part, that State was constrained from reaching any full ECS claim by the presence of, inter alia, Venezuela. In spite of this early assertion, as will be seen in Section 4.2., that the submission of Barbados to the CLCS does not take into account that fact, either from a procedural or substantive point of view.

Additionally, despite the fact that the Tribunal during the arbitration of 2006 decided that its jurisdiction included the delimitation of the maritime boundary in relation to that part of the continental shelf extending beyond 200 M, it did not take into account geological and geomorphological features (scientific and technical criteria) as it did not give any
weight to the concept of natural prolongation to justify its award. The Tribunal supported
its view affirming that, with very few exceptions, the quest for neutral criteria of a
geographical character prevailed in the end over area-specific criteria such as
geomorphological aspects. Furthermore, in spite of expressly referring to Article 56 of
UNCLOS regarding the rights, jurisdiction and duties of coastal States in the EEZ, the
Tribunal did not refer to its paragraph 3 that states: “The rights set out in this article with
respect to the seabed and subsoil shall be exercised in accordance with Part VI.”

[Continental Shelf].

With regard to the arbitral award of 2007 (Guyana-Suriname), the legal counsel for
Guyana did not refer to the ongoing process of Good Offices led by the Secretary-
General of the UN in pursuit of the Agreement to resolve the controversy over the land
frontier between Venezuela and British Guiana of 1966, hence, ignoring “the land
dominates the sea” principle.

In addition, in the arbitration of 2007 (Guyana-Suriname), unlike in the arbitration of
2006, the Tribunal was not invited to delimit maritime areas beyond 200 M from the
baselines of Guyana and Suriname. Both Parties reserved their rights under Article
76(4) of UNCLOS. Thus, the Tribunal was not concerned with matters regarding the
delimitation of the extended continental shelf of the Parties. Annex 12 contains a
Comparative Table of the arbitral awards of 2006 (Barbados-Trinidad and Tobago) and
2007 (Guyana-Suriname).

After having described and analyzed in this Part the arbitral awards of 2006 and 2007
establishing the maritime boundaries between Barbados and Trinidad and Tobago and
Guyana and Suriname, respectively, as well as the weight given or not by both
Tribunals to geological or geophysical factors when delimiting the continental shelf
within or beyond 200 M, the following Part will deal with submissions made to the CLCS
by all the States involved in those arbitrations and their impact on the ECS of the region.
As will be seen below in Section 4.2., in the chapter related to “Absence of disputes” of
its Executive Summary to the CLCS, Barbados indicated that the award of an UNCLOS
Annex VII Tribunal in April 2006 had determined the areas of maritime entitlement between Barbados and Trinidad and Tobago.
Part 4: Submissions to the Commission on the Limits of the Continental Shelf and reactions by neighboring States
4.1. Introduction

As seen in Part 3 above, the arbitral award of 2006 (Barbados-Trinidad and Tobago) as well as the arbitral award of 2007 (Guyana-Suriname) settled the maritime boundaries of the States involved in those arbitrations in the Northeastern part of South America and the Caribbean facing the Atlantic Ocean.

However, unlike the award of 2007, the award of 2006 allowed one of the Parties an unimpeded access to an area where other States of the region already had or were to claim an extended continental shelf.

In 2008, Barbados submitted to the CLCS information on the limits of the continental shelf beyond 200 M from the baselines from which the breadth of the territorial sea is measured. In the chapter related to “Absence of disputes” of its Executive Summary, Barbados indicated that the award of an UNCLOS Annex VII Tribunal in April 2006 had determined the areas of maritime entitlement between Barbados and Trinidad and Tobago. The consideration of that submission was included in the provisional agenda of the twenty-second session of the CLCS held in New York from 11 August to 12 September 2008.

Equally, in 2008 Suriname submitted information to the CLCS. The consideration of that submission was included in the provisional agenda of the twenty-fourth session of the CLCS held in New York from 10 August to 11 September 2009.

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191 Ibid. See Section 1.4. “Absence of Disputes”, subsection 1.4.1, p. 4.
192 Ibid.
194 Ibid.
In 2009, Trinidad and Tobago also submitted information to the CLCS.\textsuperscript{195} The consideration of that submission was included in the provisional agenda of the twenty-fifth session of the CLCS to be held in New York in March-April 2010.\textsuperscript{196}

Also in 2009, Guyana submitted preliminary information to the Secretary-General of the UN.\textsuperscript{197}

In accordance with Rule 50 of the Rules of Procedure of the CLCS, the Secretary-General of the UN notified all States Members of the UN, including States Parties to UNCLOS of the receipt of the submissions, and made public the executive summaries of the submissions, including all charts and coordinates contained therein.\textsuperscript{198}

According to UNCLOS, the functions of the CLCS are to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 M and to make recommendations in accordance with Article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea as well as to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data.\textsuperscript{199}

Following the arbitral awards of 2006 (Barbados-Trinidad and Tobago) and 2007 (Guyana-Suriname), this Part describes and analyzes the next step that States involved in those arbitrations took to consolidate their respective positions with regard to their claims to an ECS in the Northeastern part of South America facing the Atlantic Ocean.

\textsuperscript{196} Ibid.
\textsuperscript{198} Ibid.
\textsuperscript{199} Article 3, Annex II, UNCLOS
4.2. Submission by Barbados (Executive Summary) to the CLCS of 2008

4.2.1. Introduction

Barbados is a State Party to UNCLOS since 1993.\textsuperscript{200} The submission was made to the CLCS pursuant to Article 76(8) of the UNCLOS, in respect of the establishment of the outer limits of the continental shelf beyond 200 M from the baselines from which the breadth of the territorial sea of Barbados is measured.\textsuperscript{201} According to Barbados, the outer limits of the continental shelf submitted were based on the provisions of Article 76 and of Annex II of UNCLOS.\textsuperscript{202}

4.2.2. Description of the ECS

Barbados’ continental shelf beyond 200 M was divided into two sections, the southern section and the northern section. For the purpose of the submission, the southern section was labeled and referred to as the “Southern Area” and the northern section was labeled and referred to as the “Northern Area”.\textsuperscript{203}

Although Barbados did not refer to the concept of natural prolongation or geological and geomorphological features of the ECS in its Executive Summary, it is useful to recall that, according to the Scientific and Technical Guidelines of the CLCS, Point 2 “Entitlement to an extended continental shelf and the delineation of its outer limits”, paragraph 2.1.2. establishes:

> Paragraph 4(a) suggests the formulation of a test of appurtenance in order to entitle a coastal State to extend the outer limits of the continental shelf beyond the limit set by the 200-nautical-mile distance criterion. This test consists in the demonstration of the fact that the natural prolongation of its


\textsuperscript{201} Ibid. See paragraph 1.1.2.

\textsuperscript{202} Ibid. See paragraph 1.1.3.

\textsuperscript{203} Ibid. Paragraph 1.1.4.
land territory to the outer edge of the continental margin extends beyond a line delineated at a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.\textsuperscript{204}

From the information contained in its Executive Summary, it is not possible to determine if Barbados provided the CLCS with documentation regarding the absence of interruption of its natural prolongation between the 200 M and the outer limits of the continental shelf.

\subsection*{4.2.3. Relevant provisions of Article 76}

With regard to the relevant provisions of Article 76 of UNCLOS, the Executive Summary stated that the outer limits of Barbados’ continental shelf in both the Southern and Northern areas were based on the provisions of Article 76(4)(b) of UNCLOS.\textsuperscript{205} In Barbados’ point of view, Article 76(4)(a)(i) was the relevant provision of UNCLOS in respect to both areas.

\subsection*{4.2.4. Outer limits of the ECS}

In the Southern Area, six points were identified. In the Northern Area, nine points were identified.\textsuperscript{206} With the exception of two points [FP6 and FP7 (200 M)], Barbados relied exclusively on what is known as the sediment thickness formula or Gardiner formula.\textsuperscript{207}

\subsection*{4.2.5. Absence of disputes}

\textsuperscript{204} CLCS\textsuperscript{11}, para. 2.1.2.
\textsuperscript{205} Ibid. Paragraph 1.2.1. See also Article 76(4)(b), UNCLOS: “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.”
\textsuperscript{206} See para. 1.3.1. See also Article 76 (4)(a)(i), UNCLOS: See Section 2.5. of this paper. See also CLCS\textsuperscript{11}, para. 8.1.9. According to the Guidelines, “The thickness of sediments can be determined by means of direct sampling and indirect methods. Direct sampling is conducted by means of drilling. This is a very costly process, particularly in deep water, and only gives spot values. Indirect methods include acoustic and potential field measurements. These are less expensive, more expeditious and give a better understanding of sediment distribution. However, they require additional information. The method of seismic profiling, for example, needs velocity calibration.”
\textsuperscript{207} See Annex 7 for Final outer limit positions defining the continental shelf of Barbados.
Barbados stated that, in accordance with Article 76(10) and Article 9 of Annex II of UNCLOS, its submission and the recommendations of the CLCS were without prejudice to the question of the delimitation of the continental shelf between States. Barbados recognized that there were areas of potential overlapping entitlements in respect of the continental shelf beyond 200 M in both the Southern (Guyana and Suriname) and Northern areas (France). Despite the fact of having affirmed during the arbitral proceedings in 2006 that it was constrained from reaching any full ECS claim by the presence of, inter alia, Venezuela, Barbados did not identify Venezuela as possibly having any overlapping entitlement in respect of the continental shelf beyond 200 M in the “Southern Area”.

With reference to the potential overlapping entitlements in respect of the continental shelf beyond 200 M in both areas, Barbados affirmed that the Governments of Suriname, Guyana and France had each agreed not to object to the consideration by the CLCS of Barbados’ submission. Barbados did not refer to Venezuela, as it did not consult the latter prior to making its submission to the CLCS. With regard to Trinidad and Tobago, Barbados pointed out that the award of an UNCLOS Annex VII Tribunal in April 2006 determined the areas of marine entitlement between the two States.

In relation to possible existing disputes, the Rules of Procedure of the CLCS, specifically Rule 46 dealing with submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes, Annex I, paragraph 2(a) and Annex III (Modus operandi) and the Scientific and

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208 Article 76(10), UNCLOS: “The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.” See also Article 9, Annex II, UNCLOS: “The actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts.” As regards the CLCS, it is also convenient to remind Rule 46 and Annex I of the Rules of Procedures of the CLCS dealing with “Submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes.”

209 See para. 157 of the arbitral award of 2006 (Barbados-Trinidad and Tobago).

210 For Trinidad and Tobago’s reaction to this statement see: <http://www.un.org/Depts/los/clcs_new/submissions_files/brb08/tto_aug2008.pdf>

211 Ibid. Paragraph 1.4.1.

212 CLCS/40/REV. 1, Rule 46, Annex I, particularly 2(a) and Annex III (Modus operandi) of the Rules, specifically II: Organization of the work of the Commission: 2. Agenda items related to the submission: “(a) Presentation of the
Technical Guidelines of the CLCS, specifically paragraph 9.1.4. \textsuperscript{213} are worth noting. According to paragraph 2(a) of Annex I of the Rules of Procedures of the CLCS, in case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States, or in other cases of unresolved land or maritime disputes, related to the submission, the CLCS shall be informed of such disputes by the coastal States making the submission. Figure 11 shows the outer limit of the continental shelf of Barbados.
4.2.6. Overlapping claims for an ECS

Finally, as regards the overlapping claims for an extended continental shelf, according to the information submitted by Barbados to the CLCS, Points FP1 and FP2 are located...
southeast of the prolongation of the line established by the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 (Point 22) mentioned above (see Section 2.7., as well as Figure 5).

Additionally, Points FP6 and FP7, both located at 200 M, that establish the end of the Southern Area and the beginning of the Northern Area indicate lines, towards Points FP5 and FP8 respectively, that cross in an intersection that is not explained in the Executive Summary (see Figure 13).

Figure 12 Barbados’s submission (“Southern Area”): Points FP1 and FP2, are located south of the prolongation of the line established by the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990

Source: Adapted by Author from Google Earth, 2009 (http://earth.google.com/). This map is for illustrative purposes only.
Figure 13 Barbados’s submission: Points FP6 and FP7, both located at 200 M and that establish the end of the Southern Area and the beginning of the Northern Area indicate lines, towards Points FP5 and FP8 respectively, that cross in an intersection that is not explained in the Executive Summary.

Source: Adapted by Author from Google Earth, 2009 (http://earth.google.com/). This map is for illustrative purposes only.

There seems to be also some discrepancy in the “Northern Area” between the information submitted by Barbados and that submitted by France on behalf of the French Antilles (see Figure 14).
4.3. Reactions by neighboring States

4.3.1. Reaction by Suriname of 2008

In 2008, the Ministry of Foreign Affairs of Suriname addressed a letter to the Secretary-General of the UN regarding the submission made by Barbados to the CLCS.\(^{214}\)

In that regard, Suriname affirmed it had a continental shelf entitlement in the area referred to in the Barbadian Executive Summary as the Southern Area.\(^{215}\)

In its letter, the Surinamese Government reminded that, according to UNCLOS, to which Suriname and Barbados were both Parties, including its Annex II and the Rules of

\(^{215}\) Ibid. Paragraph 2
Procedure of the CLCS, the submission should not prejudice the matters relating to the delimitation of boundaries between States with opposite or adjacent coasts.\textsuperscript{216}

Suriname also reminded that the submission made by Barbados, and any recommendations by the CLCS, were without prejudice to any future submission to be made by Suriname with respect to the continental shelf in the Atlantic Ocean and the delimitation of the continental shelf between Suriname and its neighboring States in the area referred to in the Barbadian Executive Summary as the Southern Area.\textsuperscript{217}

4.3.2. Reaction by Trinidad and Tobago of 2008

Trinidad and Tobago addressed a Note Verbale to the Secretary-General of the UN also referring to the submission made by Barbados to the CLCS.\textsuperscript{218}

Trinidad and Tobago rejected Barbados’ statement that an award of an UNCLOS Annex VII Tribunal in 2006 had determined the areas of marine entitlement between the two States,\textsuperscript{219} stating that it intended to make a submission to the CLCS in accordance with the Rules of Procedure.\textsuperscript{220} Trinidad and Tobago also requested to place on record that Barbados had not held consultations with it as the Rules of the CLCS required.\textsuperscript{221}

Trinidad and Tobago warned that there would be areas of potential overlapping entitlements in respect of the continental shelf beyond 200 M with certain neighboring States, including Barbados. Nevertheless, it stated that it would not object to the submission made by Barbados but that it reserved all its rights in respect of its own submission.\textsuperscript{222}

\begin{flushleft}
\textsuperscript{216} Ibid. Paragraph 3. The reference is to Article 76(10) and Annex II, Article 9 of UNCLOS; CLCS/40/REV. 1, Rule 46 and Annex I.
\textsuperscript{217} Paragraph 4.
\textsuperscript{219} Ibid. See paras 2 and 3
\textsuperscript{220} Ibid.
\textsuperscript{221} Ibid. Paragraph 3. See CLCS/40/REV. 1, Rule 46, Annex I and Annex III (Modus operandi), specifically II.
\textsuperscript{222} Ibid. Paragraph 4
\end{flushleft}
Trinidad and Tobago asserted that, should Barbados object to its future submission, it would consider this as a dispute.223

4.3.3. Reaction by Venezuela of 2008

As seen previously in Section 4.2., Points FP1 and FP2 of the Barbadian submission, both located in the “Southern Area”, are to be found south of the prolongation of the line established by the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990.

Accordingly, Venezuela also addressed a Note Verbal to the Secretary-General of the UN referring to the submission made by Barbados to the CLCS.224

Venezuela affirmed that, in accordance with customary international law225 and irrespective of the fact that it was not a Party to UNCLOS,226 it had rights over the continental shelf in the area referred to in the Executive Summary of Barbados as the “Southern Area”.227 These rights were exclusive and did not depend on occupation, effective or notional.228

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223 Ibid. Paragraph 6
225 Ibid. Paragraph 2. See also Continental Shelf (Tunisia/Lybia), op. cit., para. 43, p. 18: “While the term “natural prolongation” may have been novel in 1969, the idea to which it gave expression was already a part of existing customary law as the basis of the title of the coastal State.” See also Trinidad and Tobago’s Counter-Memorial, op. cit., para. 274, p. 96, footnote 267.
226 Ibid. Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, I.C.J. Reports 1978, para. 86, p. 36: “The reason is that legally a coastal State’s rights over the continental shelf are both appurtenant to and directly derived from the State’s sovereignty over the territory abutting on that continental shelf.”
227 Ibid.
228 Ibid. In spite of the submission made by Barbados to the CLCS, according to customary and treaty law, Venezuela’s rights over its entire continental shelf, including that part extending beyond 200 M, have not been affected by the submission. See Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States), I.C.J. Reports 1984, para. 91, p. 246: “Following this review of the implications for the present problem of the endeavour made in 1958 to codify the subject, it will now be appropriate to consider the bearing on the same problem of the Court’s Judgment of 20 February 1969 in the North Sea Continental Shelf cases. That Judgment, while well known to have attributed more marked importance to the link between the legal institution of the continental shelf and the physical fact of the natural prolongation than has subsequently been given to it, is nonetheless the judicial decision which has made the greatest contribution to the formation of customary law in this field. From this point of view, its achievements remain unchallenged.” See also para. 213(iii) of the the arbitral award of 2006 (Barbados-Trinidad and Tobago). See also Article 2, Convention on the Continental Shelf of 1958, virtually reproduced in Article 77 of UNCLOS, Convention to which Barbados is a State
As seen in Section 2.1., with the signature of the Venezuela-UK Delimitation Treaty (Gulf of Paria Treaty) in 1942, Venezuela has exercised rights over its submarine areas. In other words, over the seabed and subsoil as well as over its living and non-living resources located in those areas. Those rights were further reinforced when it decided to become a Party to the 1958 Convention. The signature and entering into force of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 consolidated Venezuela’s rights over its continental shelf by additionally adapting the institution to the new developments of international law.229

In spite of the fact that Venezuela is not a State Party to UNCLOS, it has accepted the geological and geomorphological definition of the continental shelf as reflected in Article 76 of UNCLOS. Article II of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 reflects that recognition (see Section 2.7.).

Notwithstanding the submission made by Barbados to the CLCS, according to customary and treaty law, Venezuela’s rights over its entire continental shelf, including that part extending beyond 200 M, have not been affected by the submission. This assertion was recognized by the Tribunal that established the maritime boundary between Barbados and Trinidad and Tobago when stating that in any event, there was in law only a single “continental shelf” rather than an inner continental shelf and a separate extended or outer continental shelf. This assertion may also have its origin in the 1958 Convention and Article 77 of UNCLOS which repeats Article 2 of the 1958 Convention (see Sections 2.3 and 2.5.).

The Venezuelan Note also affirmed that, in accordance with UNCLOS, to which Barbados was a Party, and the Rules of Procedure of the CLCS, the actions of the Party. See also Dupuy, R.J. and Vignes, D. *op. cit.*, p. 368: “The Law of the Sea Convention simply reproduces the relevant provisions of Article 2 of the 1958 Convention on the Continental Shelf. In the case of the continental shelf, the rights of the coastal State are threefold: they are sovereign, exclusive and inherent.”

229 See preamble paragraph 3 of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990. See also comments on this issue in Section 2.7.
CLCS could not prejudice matters relating to the delimitation of boundaries between Venezuela and its neighboring States in the Atlantic Ocean.\textsuperscript{230}

Additionally, Venezuela pointed out that Barbados did not confer with it prior to making its submission.\textsuperscript{231} Venezuela reserved all of its rights pursuant to international law, including the right to make future objections and comments regarding the submission of Barbados.

\textbf{4.4. Submission by Suriname (Executive Summary) to the CLCS of 2008}

\textbf{4.4.1. Introduction}

Suriname is a State Party to UNCLOS since 1998.\textsuperscript{232} The submission was made to the CLCS pursuant to Article 76 and Annex II, Article 4 of UNCLOS in respect of the establishment of the outer limits of the continental shelf beyond 200 M from the baselines from which the breadth of the territorial sea of Suriname is measured.\textsuperscript{233}

\textbf{4.4.2. Description of the ECS}

Suriname highlighted to the CLCS that the outer limits of its continental shelf was located at the base of the continental margin of the Atlantic Ocean. According to Suriname, the dominant features of that area were the Suriname-Guyana Marginal Basin, the Demerara Plateau, and the Suriname-Guyana Deep Water Basin.\textsuperscript{234} It is worth highlighting the fact that, unlike the submission made by Barbados to the CLCS,

\textsuperscript{230} Ibid. Paragraph 3. The reference is to Article 76(10) and Annex II, Article 9 of UNCLOS; CLCS/40/REV. 1, Rule 46 and Annex I.

\textsuperscript{231} Ibid. Paragraph 4. See CLCS/40/REV. 1, Rule 46 and Annex I, specifically 2(a) and Annex III (Modus operandi), specifically II.


\textsuperscript{233} Ibid. 1, paragraph 2

\textsuperscript{234} Ibid. 2, para. 1
the submission made by Suriname described the geological and geomorphological features of the area it covered.

4.4.3. Relevant provisions of Article 76

With regard to the provisions invoked by Suriname, the outer edge of the continental margin was based on Article 76(3), (4)(a)(i) and 4(b)\textsuperscript{235} as well as Article 76(5) and (7) of UNCLOS.\textsuperscript{236} Suriname, like Barbados, relied only on the Gardiner formula contained in Article 76(4)(a)(i) of UNCLOS. Nevertheless, this is true only in the eastern area of Suriname's submission and not in the western area, which is located close to the "Southern Area" of Barbados' submission.

In the western area, the coordinates given by Suriname were located near the first three points of Barbados' submission in the "Southern Area". In this area, Suriname established its outer limit positions on the basis of the constraints lines of Article 76(5), in other words, not exceeding 350 M from the baselines from which the breadth of the territorial sea is measured or 100 M from 2,500 metre isobaths, which is a line connecting the depth of 2,500 metres.

4.4.4. Outer limits of the ECS

With regard to the outer limits of its continental shelf, Suriname described that a total of seven (7) foot of the slope points were selected along the continental margin in the area of the Suriname-Guyana Basin and the Demerara Plateau.\textsuperscript{237}

From these foot of the slope points, five (5) points were established at which sufficient sediment thickness was demonstrated to allow the application of the 1% sediment

\textsuperscript{235} Ibid. 3, para. 1
\textsuperscript{236} Ibid. 3, para. 2. Article 76(7) states: "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 coordinates of latitude and longitude."
\textsuperscript{237} Ibid. 5, para. 1
formula of Article 76(4)(a)(i) of UNCLOS. According to Suriname, these five (5) points (OL-SUR-01, OL-SUR-02, OL-SUR-03, OL-SUR-04 and OL-SUR-05) were used as fixed points in accordance with Article 76(7) of UNCLOS.

Additionally, fourteen (14) fixed points defining the outer limit were located at 350 M from which the breath of the territorial sea of Suriname is measured.\(^{238}\)

### 4.4.5. Absence of disputes

Suriname recognized that some unresolved questions remained in relation to the bilateral delimitation of its continental shelf with neighboring States. Suriname noticed that it had considered the issue with its neighboring States in accordance with Article 76(10), of UNCLOS and Rule 46 and Annex I of the Rules of Procedure of the CLCS. The submission and the recommendations of the CLCS made in respect of it were, according to Article 76(10) of UNCLOS and Article 9 of Annex II to UNCLOS, without prejudice to the delimitation of maritime boundaries between States.\(^{239}\)

With regard to its eastern territorial neighbor, France, Suriname stated that both shared a maritime boundary that extended up to the limits of the continental shelf. Consequently, Suriname held consultations with France concerning Suriname’s submission to the CLCS. France agreed not to object to the consideration by the CLCS of Suriname’s submission. The submission was without prejudice to the delimitation of the maritime boundary with France.\(^{240}\)

As regards to Suriname’s western territorial neighbor, Guyana, Suriname pointed out that the maritime boundary between the two States had been established up to the outer limit of the EEZ (see Section 3.3., regarding the arbitral award of 2007 (Guyana-
Suriname) . The boundary of the continental shelf of Suriname beyond the outer limit of Suriname’s EEZ remained to be established.\textsuperscript{241}

Additionally, concerning its submission of information to the CLCS, Suriname held consultations with its western neighbors, namely: Barbados, Guyana, Trinidad and Tobago and Venezuela.\textsuperscript{242} The Governments of each of these States agreed not to object to the consideration by the CLCS of the submission of Suriname.\textsuperscript{243} It is worth highlighting the fact that Suriname held consultations with all its neighbors.

Consequently, Suriname informed the CLCS that, according to paragraph 2(a) of Annex I of the Rules of Procedures of the CLCS, there was no dispute related to its submission.\textsuperscript{244} In this way, Suriname assured the CLCS that its submission could be treated without prejudice to issues related to the delimitation of the continental shelf between neighboring States.\textsuperscript{245} Figure 15 illustrates the outer limit of the continental shelf proposed by Suriname in its submission.

\textsuperscript{241} Ibid. 4, para. 4
\textsuperscript{242} Ibid. 4, para. 2
\textsuperscript{243} Ibid.
\textsuperscript{245} Ibid.
Figure 15 Map showing the outer limit of the continental shelf of Suriname
4.4.6. Overlapping claims for an ECS

Finally, as regards the overlapping information submitted by States of the region to the CLCS, there seems to be an incompatibility between Point OL-SUR-019 and the southernmost Points of the Barbadian submission (FP1, FP2 and FP3 in the “Southern Area”), all located in the same area. While Suriname relied on the constraint lines established in Article 76(5), Barbados claimed virtually the same area based on the Gardiner formula of the 1% thickness of sedimentary rocks (Article 76 (4)(a)(i)). See Figure 16.

**Figure 16** Suriname’s submission: Incompatibility between Point OL-SUR-019 and the southernmost Points of the Barbadian submission (FP1, FP2 and FP3 in the “Southern Area”), all located in the same area. While Suriname relied on the constraint lines established in Article 76(5), Barbados claimed virtually the same area based on the Gardiner formula of the 1% thickness of sedimentary rocks (Article 76 (4)(a)(i))

Source: Adapted by Author from Google Earth, 2009 (http://earth.google.com/). This map is for illustrative purposes only.
4.5. Reaction by neighboring States

4.5.1. Reaction by France of 2008

In 2008, France addressed the UN Secretariat a Note Verbale regarding the submission of Suriname to the CLCS.\(^\text{246}\)

France recalled that, pursuant to Article 76(8), of UNCLOS, it had made a partial submission to the CLCS in 2007 in respect of the areas of French Guiana and New Caledonia. France indicated therein that the continental shelf of French Guiana was not the subject of any dispute. It confirmed that negotiations between France and Suriname regarding the delimitation of their maritime boundary were ongoing.\(^\text{247}\)

Additionally, France took note of the declaration of Suriname, pursuant to Article 76(10), of UNCLOS, according to which the submission of Suriname did not prejudice the delimitation of the maritime boundary between France and Suriname. On this basis, France confirmed that it had no objection to the CLCS addressing its recommendations to Suriname with regard to the delineation of the outer limits of the continental shelf as long as those recommendations did not prejudice the definitive delimitation of the continental shelf between France and Suriname.\(^\text{248}\)

4.5.2. Reaction by Trinidad and Tobago of 2009

In 2009, Trinidad and Tobago sent a Note to the Secretary-General of the UN also referring to the submission made by Suriname to the CLCS.\(^\text{249}\)

\(^{247}\) Ibid. Paragraph 2. See submission of Suriname to the CLCS, 4, para. 2. See also CLCS/40/REV. 1, Rule 46, Annex I and Annex III (Modus operandi), specifically II.
\(^{248}\) Ibid. Paragraph 3. Apart from Article 76(10), UNCLOS, see also Article 9, Annex II of UNCLOS; CLCS/40/REV. 1, Rule 46 and Annex I.
Trinidad and Tobago acknowledged Suriname’s declaration, pursuant to Article 76(10) of UNCLOS, that areas of potential overlap of the extended continental shelf of the two States would not prejudiced the delimitation of maritime boundaries. 250 On that basis, Trinidad and Tobago confirmed the reciprocal undertaking not to object to the submission of the other State to the CLCS. 251

Trinidad and Tobago also stated that it had no objection to the CLCS making recommendations to Suriname with regard to the delineation of the outer limits of the continental shelf, on the understanding that those recommendations would not prejudice the establishment by Trinidad and Tobago of the outer limits of its continental shelf, or the subsequent delimitation of the continental shelf between Trinidad and Tobago and Suriname. 252

4.5.3. Reaction by Barbados of 2009

Similarly, in 2009, Barbados sent a Note to the UN Secretariat – Division for Ocean Affairs and the Law of the Sea – referring to the submission made by Suriname to the CLCS in 2008. 253

In its Note, Barbados informed that there was potential overlap in respect of areas of its submission to the CLCS and that of Suriname. 254

As a result, Barbados reminded that, according to Article 76 and Annex II of UNCLOS and the Rules of Procedure of the CLCS, including its Annex I, the actions of the CLCS should not prejudice matters relating to delimitation of boundaries between States. Barbados also reminded that any recommendations by the CLCS were without

250 Ibid. Paragraph 2. Apart from Article 76(10), UNCLOS, see also Article 9, Annex II of UNCLOS; CLCS/40/REV. 1, Rule 46 and Annex I.
251 Ibid. CLCS/40/REV. 1, Rule 46, Annex I and Annex III (Modus operandi), specifically II.
252 Ibid.
254 Ibid. Paragraph 2.
prejudice to Barbados’ submission and the delimitation of boundaries between Barbados and Suriname.  

4.6. Submission by Trinidad and Tobago (Executive Summary) to the CLCS of 2009

4.6.1. Introduction

Trinidad and Tobago is a State Party to UNCLOS since 1986. The submission was made to the CLCS pursuant to Article 76 and Annex II, Article 4, of UNCLOS in respect of the establishment of the outer limits of the continental shelf beyond 200 M from the baselines from which the breadth of the territorial sea of Trinidad and Tobago is measured. Trinidad and Tobago reminded the CLCS that it was an archipelagic State and therefore it was entitled to draw straight archipelagic baselines according to UNCLOS.

Trinidad and Tobago also affirmed that its coastline abutting on the Atlantic Ocean faced in a generally easterly direction while the southern coast of Tobago and the northwestern tip of Trinidad generally looked southeast along the continental shelf off the South American continent.

As seen in Section 2.7., Trinidad and Tobago also reminded the CLCS of its early contribution to the development of the law of the sea relating to the continental shelf when in 1942 the United Kingdom (Trinidad) and Venezuela signed the historic Gulf of Paria Treaty that delimited the submarine areas of that Gulf. The Treaty, to which

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255 Ibid. Paragraph 3.
258 Ibid. 8 and Articles 46, 47 and 48, UNCLOS.
259 Ibid.
Trinidad and Tobago succeeded on independence in 1962, was the first bilateral agreement ever signed by any two States regarding the delimitation of the seabed and subsoil beyond the territorial sea.\textsuperscript{260} In addition, Trinidad and Tobago rightly pointed out that the Gulf of Paria Treaty of 1942 ceased to have effect in 1991 upon the entry into force of the Treaty signed in 1990 between Venezuela and Trinidad and Tobago.

### 4.6.2. Description of the ECS

According to the information submitted to the CLCS, the submerged prolongation of Trinidad and Tobago's landmass extended beyond 200 M from its coastline to the outer edge of the continental margin in the Atlantic Ocean. Hydrographic, geological and geophysical data and information had been complemented with similar relevant material compiled from recognized international scientific investigations in order to determine the geomorphology and geological nature, structure and extent of the continental shelf beyond 200 M in the Atlantic Ocean off Trinidad and Tobago.\textsuperscript{261} Trinidad and Tobago also affirmed that the outer limits of the continental shelf beyond 200 M had been delineated in accordance with the rules and methodologies described in the provisions of Article 76 of UNCLOS and the Scientific and Technical Guidelines of the CLCS.

Trinidad and Tobago made its submission taking into account the deadline for those States for which UNCLOS had entered into force prior to 13 May 1999.\textsuperscript{262} The objective of Trinidad and Tobago's submission was the establishment by the CLCS of the outer limits of its continental shelf beyond 200 M and, in doing so, allow the CLCS to carry out its treaty mandate to delineate where national jurisdiction ended and where the jurisdiction of the International Seabed Authority began.\textsuperscript{263}

Trinidad and Tobago asserted that the baselines on the eastern and southeastern coastlines facing the Atlantic Ocean were relevant for the purposes of its submission.

\textsuperscript{260} Ibid. 1, paragraph 3  
\textsuperscript{261} Ibid. 1, paragraph 4  
\textsuperscript{262} Ibid. Trinidad and Tobago was referring to the Eleventh Meeting of States Parties to UNCLOS, held from 14 to 18 May 2001.  
\textsuperscript{263} Ibid. 3, paragraph 3 and CLCS/40/REV. 1, Rule 45(a)
These baselines faced along the shoulder of the South American mainland and looked directly onto the continental shelf appertaining to this part of the mainland in a maritime area in which the submarine projections of the landmass of Trinidad and Tobago, Venezuela, Guyana, Suriname and French Guyana (sic) converge and overlap.\textsuperscript{264} It is worth mentioning that Trinidad and Tobago, like Suriname, recognized the existence of this particular area linked to the South American landmass, an area where some States in the region converged and overlapped.\textsuperscript{265}

Trinidad and Tobago affirmed that, according to Articles 1 and 3 of Annex II of UNCLOS, the CLCS possessed a unique competence conferred by UNCLOS to delineate the outer limits of the continental shelf in those areas where the said limits extended beyond 200 M from the baselines from which the breadth of the territorial sea was measured.\textsuperscript{266}

In order to support its argument, Trinidad and Tobago relied on the judgment of the ICJ regarding the case of the Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea. According to Trinidad and Tobago, the ICJ recognized that a logical precursor to any delimitation of an ECS was the establishment by the CLCS of the outer limits of the continental shelf in accordance with Article 76 of UNCLOS.\textsuperscript{267}

The first step for establishing an ECS was, according to Trinidad and Tobago, to determine the outer limits of the continental shelf in conformity with the Scientific and Technical Guidelines of the CLCS. For that purpose, the coastal State had to satisfy a test of appurtenance contained in Article 76(4)(a) of UNCLOS. That State could resort to spatial, geographical, geomorphological, geological and geophysical criteria to

\textsuperscript{264} Ibid. 8
\textsuperscript{265} In contrast, see the description of the area given by the Tribunal in the arbitral award of 2006 (Barbados-Trinidad and Tobago), whereby Barbados, unlike Trinidad and Tobago, seems not to be linked to the South American landmass from the geological and geomorphological point of view. See Part 3, section 3.2.3.1.
\textsuperscript{266} Ibid. 9, para. 6
demonstrate that the outer edge of its continental margin extended beyond 200 M from its baselines. If the test of appurtenance was satisfied, then the coastal State was "obliged" to establish the outer limits of its continental shelf. The complex rules governing the exercise of this obligation were contained in Article 76(4), (5) and (7) of UNCLOS. \(^{268}\)

The test of appurtenance required the coastal State to demonstrate that the outer limit edge of its continental margin, determined on the basis of the distance formula or the sediment thickness formula line set out in Article 76(4), extended beyond 200 M from the baselines from which the breadth of the territorial sea is measured. According to Trinidad and Tobago, the conduct of the test of appurtenance confirmed that with regard to both, the distance formula line and the sediment thickness formula, the outer edge of its continental margin extended beyond 200 M from the baselines from which the breadth of the territorial sea is measured. The submarine projections of those baselines trend in a southerly direction along the continental shelf of the South American continent. Having satisfied the test of appurtenance, the coastal State could then proceed to the delineation of the constraint lines. \(^{269}\) It is also important to note that, unlike submissions made by other States of the region, Trinidad and Tobago linked the need of satisfying the test of appurtenance with the description of the geological and geomorphological features of the submarine area located along the continental shelf off the South American continent.

\(^{268}\) Ibid. 10, paras. 6 and 8. See also CLCS/11, para. 2.2.4. According to the Guidelines, “The Commission defines the term of “test of appurtenance” as the process by means of which the above provision (Article 76, paragraph 4(a) (emphasis added)) is examined. The test of appurtenance is designed to determine the legal entitlement of a coastal State to delineate the outer limits of the continental shelf 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.”

\(^{269}\) Ibid. 10, paras. 12 and 13. See also CLCS/11, para. 8.1.7. According to the Guidelines, “The rise on a passive continental margin is ideally a wedge-shaped apron formed by sediments lying on oceanic and partly continental basements. The sediment thickness is expected to decrease gradually from the foot of the continental slope towards the abyssal plains of the deep ocean. The basement at the base of the sediments may have very variable dips, but in many cases has a gentle general dip towards the continent.”
Trinidad and Tobago affirmed that it had gathered and analyzed geomorphological, geological, geophysical and hydrographic data and information whose results were reflected in the Main Body of its submission. These results showed that the natural prolongation of the land territory of Trinidad and Tobago extended beyond 200 M, thereby fulfilling the test of appurtenance.\textsuperscript{270}

According to Trinidad and Tobago, its continental margin was located at the boundary between the southeastern edge of the Caribbean and the northern South American Plates. The tectonic interactions of the two plates had influenced the geology of the region. The margin was underpinned by a wedge shaped basin, which contained a vast quantity of sediments, thought to be derived from proto-Orinoco and proto-Amazon sources from as early as the Tertiary. Deposition continued to the present day and studies had shown that currently, more than $3 \times 10^8$ tons of sediment per year was transported northward from the Orinoco and Amazon river systems.\textsuperscript{271} As can be seen, Trinidad and Tobago described the natural prolongation of its land territory to the outer edge of the continental margin (test of appurtenance), as Article 76(4)(a) requires. Additionally, with regard to the concept of natural prolongation and the test of appurtenance, Trinidad and Tobago expressly referred to the river systems, including the Orinoco River, as being one of the sources of the vast quantity of sediments that characterized the ECS of the region.

\textsuperscript{270} Ibid. 10, para. 16. See also CLCS/11, para. 8.1.4. According to the Guidelines, “A coastal State that intends to apply this provision (Article 76, paragraph 4(a)(i)) will have to document the position of the foot of the continental slope and the thickness of sediments in a seaward direction from it.”

\textsuperscript{271} Ibid. 13, para. 1. See also CLCS/11, para. 8.1.6. According to the Guidelines, “The sediments of the classical rise and other sediment wedges adjacent to the foot of the continental slope may consist of material eroded from the adjacent continent and deposited by turbidity and contour currents. The rise on a passive continental margin is ideally a wedge-shaped apron formed by sediments lying on oceanic and partly continental basements. The sediment thickness is expected to decrease gradually from the foot of the continental slope towards the abyssal plains of the deep ocean. The basement at the base of the sediments may have very variable dips, but in many cases has a gentle general dip towards the continent.”
4.6.3. Relevant provisions of Article 76

Concerning the provisions invoked to support its submission, Trinidad and Tobago relied on Article 76(4) to (10) of UNCLOS.272 According to Trinidad and Tobago, both formula lines (Gardiner and Hedberg formulae) which allowed the delineation of the outer envelope of the formulae line as well as both constraints, which allowed the delineation of the outer envelope of the constraint line, were applied. Lastly, the combination of the aforementioned lines allowed the delineation of the inner envelope representing the outer limit of its continental shelf.273 Trinidad and Tobago relied on the Gardiner formula only in the first two coordinates (TT-FP1 and TT-FP2) located in the northwest of the outer limit of its continental shelf. From TT-FP2 the 350 M constraint was used until reaching TT-FP30, where the other constraint, in other words, the 2,500 m + 100 M, was used.

4.6.4. Outer limits of the ECS

As regards the description of the fixed points of the outer limits of its continental shelf, one hundred and ninety one fixed points were used. The description of the fixed points started with TT-FP1, located east of Trinidad, and continued, generally southeastwards, until reaching the last fixed point, TT-FP191, located 100 M from 2,500 m constraint line. The first and second fixed points were determined by applying the 1% sediment thickness formula. These were followed by a group of 27 fixed points up to TT-FP29 (included) located on the 350 M arc, which also complied with the 1% sediment thickness formula. Fixed points from TT-FP30 to TT-FP191 were located on the 100 M from 2,500 m isobaths constraint line. Accordingly, Trinidad and Tobago presented coordinates of longitude and latitude delineating the outer limits of the continental shelf.274

272 Ibid. 10, para. 16
273 Ibid. 10, paras. 17, 18 and 19.
274 See Annex 9 for Table of Fixed Points, defined by coordinates of longitude and latitude delineating the outer limits of the continental shelf for Trinidad and Tobago.
4.6.5. Absence of disputes

On the issue of settled maritime boundaries, Trinidad and Tobago referred in its submission to Venezuela and Barbados. With regard to the former, Article II of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990 had established the maritime boundary. Article II, paragraph 2 of that Treaty provided that both States reserved their respective rights if it was determined that, in accordance with international law, the outer limit of the continental shelf was closer to 350 M than it was to the current terminus of the boundary. According to Trinidad and Tobago, it was now known that the current terminus of the Treaty of 1990 fell appreciably short of the outer limit of the continental shelf.

Consequently, and as seen previously in Section 2.7., Trinidad and Tobago acknowledged its obligations to Venezuela under the Treaty of 1990 and recognized as well that the negotiation of the extension of the boundary line beyond the current terminus awaited action by the CLCS so that further negotiation could proceed.

Furthermore, Trinidad and Tobago recognized that the CLCS was the final arbiter of whether a coastal State satisfied the criteria contained in Article 76 of UNCLOS for the establishment of an ECS, and that a determination by the CLCS that a coastal State was entitled to an ECS was made without prejudice to the delimitation of overlapping maritime entitlements between neighboring States.

As regards to Barbados, Trinidad and Tobago affirmed that the award of 2006 had established the maritime boundary between the two States up to 200 M. As a result, Trinidad and Tobago requested the CLCS to consider the fact that when issuing its

276 Ibid.
277 Ibid. 11, para. 3.
278 Ibid. See Article 76(10), UNCLOS; Article 9, Annex II, UNCLOS and CLCS/11, Rule 46 and Annex I
279 Ibid. 11, para. 4
award the Tribunal had no recommendation from the CLCS regarding the existence and extent of the ECS appertaining to Trinidad and Tobago and Barbados.\textsuperscript{280} As seen in Section 3.2., even though the Tribunal, in its arbitral award of 2006, recognized it had jurisdiction to delimit the ECS of the Parties, it nevertheless made no express reference to it, as it certainly did not take into account any geological or geomorphological feature for the establishment of the maritime boundary between the two Parties.

Additionally, Trinidad and Tobago reminded the CLCS that the Tribunal had emphasized that its jurisdiction was limited to the dispute between the Parties of that arbitration and that it had no jurisdiction in respect of maritime boundaries between either of the Parties and any third State.\textsuperscript{281} Despite the affirmation by the Tribunal that the award of 2006 did not prejudice the position of any State in respect of any such boundary, facts appear to have demonstrated the opposite. As seen previously in Section 4.3. Barbados, based on the award of 2006, made its submission to the CLCS thereby generating strong reactions by some neighboring States of the region.

Trinidad and Tobago affirmed that it was recognized that off the northeast shoulder of the South American continent there was an area of continental shelf in the Atlantic Ocean where the extended continental shelf claims by Barbados, Guyana, Suriname, Trinidad and Tobago and Venezuela, converged and overlapped. Accordingly, there were some outstanding questions in relation to the bilateral delimitation of the continental shelf between Trinidad and Tobago and its neighboring States.\textsuperscript{282} As recognized by Trinidad and Tobago, the claims by several coastal States of the region for an ECS overlapped in the same area off the northeast shoulder of the South American continent facing the Atlantic Ocean.

In order to comply with its obligations as established in the Rules of Procedure of the CLCS, Trinidad and Tobago held consultations with Venezuela, Guyana and Suriname prior to making its submission to the CLCS. Each of those States had agreed not to

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{280} Ibid. 11, para. 7
\item \textsuperscript{281} Ibid. 11, para. 9
\item \textsuperscript{282} Ibid. 12, para. 1
\end{itemize}
\end{footnotesize}
object to the consideration of the CLCS of Trinidad and Tobago’s submission.\footnote{Ibid. 12, para. 3} Trinidad and Tobago informed the CLCS that it also had initiated consultations with France.\footnote{Ibid. 12 para. 4}

Trinidad and Tobago informed the CLCS that its submission included maritime space also claimed by Venezuela. For that reason, the submission was made in conformity with Article 76(10), and without prejudice to the question of delimitation of the continental shelf between States and having regard to the Treaty of 1990, which was binding on Trinidad and Tobago. In similar terms, Trinidad and Tobago referred to the maritime space claimed by Guyana and Suriname. Also in those cases of overlapping entitlements, the States involved had agreed to reserve their rights under international law.\footnote{Ibid. 12, para. 5}

With respect to Barbados, Trinidad and Tobago informed the CLCS that it was unable to make any representation regarding overlapping maritime entitlements similar to that made in respect to Venezuela, Guyana or Suriname. Nevertheless, Trinidad and Tobago represented to the CLCS in respect of the maritime area beyond 200 M in which Venezuela, Guyana, Suriname and Barbados could also maintain claims, that its submission covered maritime space over which the Arbitral Tribunal in its award of 2006 exercised no jurisdiction and accordingly made no award, as well as maritime space over which Barbados maintained no claim.

In order to support its argument, Trinidad and Tobago stated that while acknowledging the Tribunal’s finding that the EEZ and the continental shelf were independent institutions and that the former did not exclude the latter, its submission was not dependent on the utilization of maritime space within 200 M of the Barbados coastline.\footnote{Ibid. 12, para. 6} As seen in Section 3.2.3., during the arbitral proceedings in 2006, the Tribunal affirmed that within 200 M, the EEZ and the CS coexisted with significant
elements in common, distance being the only basis for the entitlement to each of them. However, the Tribunal’s award did not mention that, beyond 200 M, it was geological and geomorphological features and not the distance criteria which was to be taken into account when establishing an ECS.

Lastly, Trinidad and Tobago informed the CLCS that, according to paragraph 2(a) of Annex I of the Rules of Procedures of the CLCS, there was no dispute related to its submission. In this way, Trinidad and Tobago “assured” the CLCS that its submission could be treated without prejudice to issues related to the delimitation of the continental shelf between neighboring States. Figure 17 illustrates the outer limit of the continental shelf of Trinidad and Tobago.

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288 Ibid.
Figure 17 Map showing the outer limit of the continental shelf of Trinidad and Tobago
4.6.6. Overlapping claims for an ECS

Finally, as regards to the overlapping information submitted by States of the region to the CLCS over the same area, the line from points TT-FP1 to TT-FP2 cut the line of Barbados between Points FP4 and FP5. In this area both States relied on the Gardiner formula (see Figure 18).

Figure 18 Trinidad and Tobago’s submission: The line from points TT-FP1 to TT-FP2 cut the line of Barbados between Points FP4 and FP5. Both States relied in this area on the Gardiner formula

Source: Adapted by Author from Google Earth, 2009 (http://earth.google.com/). This map is for illustrative purposes only.

The line between Point TT-FP21 and TT-FP22 cut Suriname’s submission, specifically between OL-SUR-16 and OL-SUR-17. Both States used in the same area Article 76(5), probably, as specified in the submission by Trinidad and Tobago, on the 350 M constraint line. From Trinidad and Tobago’s Points TT-FP22 to TT-FP29, all located to the south of Suriname’s submission, both States used Article 76(5) as the method to establish the extended continental shelf, relying on the 350 M constraint line (see Figure 19).
Figure 19 Trinidad and Tobago’s submission: The line between Point TT-FP21 and TT-FP22 cut Suriname’s submission, specifically between OL-SUR-16 and OL-SUR-17. Both States used in the same area Article 76(5), probably, as specified in the submission by Trinidad and Tobago, on the 350 M constraint line. From Trinidad and Tobago’s Points TT-FP22 to TT-FP29, all located to the south of Suriname’s submission, both States used Article 76(5) as the method to establish the extended continental shelf, relying on the 350 M constraint line. Source: Adapted by Author from Google Earth, 2009 (http://earth.google.com/). This map is for illustrative purposes only.

However, from TT-FP30 to TT-FP96, while Suriname in this area relied on the Gardiner formula of the 1% thickness of sedimentary rocks (Article 76 (4)(a)(i)), Trinidad and Tobago claims the same area based on the 2,500 m + 100 M constraint line. From Point TT-FP96 to TT-FP191, Trinidad and Tobago’s submission overlaps with that of France made on behalf of French Guiana, the last point nearly reaching the 200 M generated by French Guiana (see Figure 20).
Figure 20 Trinidad and Tobago’s submission: From TT-FP30 to TT-FP96, while in this area Suriname relied on the Gardiner formula of the 1% thickness of sedimentary rocks (Article 76 (4)(a)(i)), Trinidad and Tobago claims the same area based on the 2,500 m + 100 M constraint line. Approximately, from Point TT-FP96 to TT-FP191, Trinidad and Tobago’s submission overlaps with that of France made on behalf of French Guiana, the last Point nearly reaching the 200 M generated by French Guiana.

Source: Adapted by Author from Google Earth, 2009 (http://earth.google.com/). This map is for illustrative purposes only.

4.7. Reactions by neighboring States

4.7.1. Reaction by Suriname of 2009

In 2009, Suriname sent a Note to the UN Secretary-General referring to the submission made by Trinidad and Tobago to the CLCS in 2009.289 In its Note, Suriname affirmed that it had a continental shelf entitlement in the area referred to in the Trinidad and Tobago’s Executive Summary as the Atlantic Ocean.290

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290 Ibid. Paragraph 2.
As a result, Suriname reminded that, according to UNCLOS, including its Annex II and the Rules of Procedure of the CLCS, in particular its Annex I, the actions of the CLCS should not prejudice the matters relating to the delimitations of boundaries between States. Suriname also reminded that any recommendations by the CLCS were without prejudice to Suriname’s submission and the delimitation of boundaries between Suriname and its neighboring States.\(^ {291}\)

4.8. Part I of the Submission by Guyana (Executive Summary/Preliminary information) to the CLCS of 2009

4.8.1. Introduction

Guyana is a State Party to UNCLOS since 1993.\(^ {292}\) Guyana transcribed the different provisions and articles of UNCLOS supporting Part I of its preliminary information.\(^ {293}\) Among the list of articles of UNCLOS transcribed were, \textit{inter alia}, Article 76(1), (2), (3), (4) to (6), (8); Article 134(4); and Annex II, Articles 4 and 9. Like Trinidad and Tobago, Guyana referred also to the Eleventh Meeting of States Parties to UNCLOS\(^ {294}\), noting that it was only after the adoption of the Scientific and Technical Guidelines by the CLCS on 13 May 1999 that States had before them the basic documents concerning submissions in accordance with Article 76(8) of UNCLOS.

Among the provisions of UNCLOS invoked by Guyana in its preliminary information was Article 83(1), which refers to the delimitation of the continental shelf. In spite of this, Guyana recognized that, according to UNCLOS, the competence with respect to the delimitation of international maritime boundaries, which may arise in connection with the

\(^{291}\) Ibid. Paragraphs 3 and 4.


\(^{293}\) Ibid. See Eleventh Meeting of States Parties to UNCLOS, held from 14 to 18 May 2001.

establishment of the outer limits of the continental shelf, rested with States.\textsuperscript{295} It is worth highlighting that, unlike submissions made by other coastal States of the region to the CLCS, Guyana expressly quoted Article 83 of UNCLOS.\textsuperscript{296}

As seen previously in Section 3.3., in 2007 a Tribunal established the maritime boundary between Guyana and Suriname through an arbitral award. The Parties did not invite the Tribunal to delimit maritime areas beyond 200 M as they reserved their rights under Article 76(4) of UNCLOS. Thus, in that arbitration, the Tribunal was not concerned with matters concerning the delimitation of the outer continental shelf of the Parties.\textsuperscript{297}

According to Guyana, its preliminary information concerning the outer limits of the continental shelf along the northern part of its continental margin was for the consideration of the CLCS and without prejudice to any potential boundary delimitations with any other States which could be conducted at a later date.\textsuperscript{298} It is uncertain, however, to which “potential boundary delimitations” Guyana may have referred to.

Through its preliminary information, Guyana aimed at fulfilling its obligations pursuant to Article 76(8) and Article 4 of Annex II of UNCLOS. In spite of this statement, according to the preliminary information posted on the CLCS website, Guyana’s preliminary information was only of indicative character.\textsuperscript{299} Guyana did not refer neither to the decision of the Eighteenth Meeting of States Parties to UNCLOS regarding to the

\begin{thebibliography}{99}
\bibitem{295} Ibid. 1, para. 17
\bibitem{296} As previously mentioned, Venezuela is not a State Party to UNCLOS, and therefore is not bound by its provisions. During the adoption of UNCLOS at the Third United Nations Conference on the Law of the Sea, Venezuela voted against its adoption, one of the reasons been its disagreement with the content of Article 83 dealing with the delimitation of the continental shelf. Equally, despite the fact of being a State Party to the Geneva Convention on the Continental Shelf of 1958, Venezuela made a reservation with regard Article 6 also dealing with the delimitation of the continental shelf. See United Nations, Statement by the Representative of Venezuela to the Third United Nations Conference on the Law of the Sea at the 158th plenary meeting of 30 March 1982, pp. 14-15. See also Colson, David A. How persistent must the persistent objector be? Washington Law Review, Vol. 61, 1986, pp. 957-970.
\bibitem{297} Ibid. Paragraph 26(i). See online: <http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm>
\bibitem{298} Ibid. 1, para. 24
\bibitem{299} Ibid. Paragraph 26(i). See online: <http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm>
\end{thebibliography}
workload of the CLCS\textsuperscript{300} nor to the decision of the Eleventh Meeting of States Parties of UNCLOS regarding the time period contained in Article 4 of Annex II of UNCLOS.\textsuperscript{301} In the former decision, the States Parties to UNCLOS established a clear distinction between a submission and preliminary information. Furthermore, the decision of the Eighteenth Meeting of States Parties to UNCLOS requires of States a description of the status of preparation and intended date of making a submission in accordance with the requirements of Article 76 of UNCLOS, the Rules of Procedure, and the Scientific and Technical Guidelines of the CLCS. It is also worth noting that pending the receipt of the submission in accordance with the requirements of Article 76 of UNCLOS, the Rules of Procedure and the Scientific and Technical Guidelines of the CLCS, preliminary information submitted should not be considered by the CLCS.\textsuperscript{302}

In spite of the above, Guyana reserved the right to determine the outer limit of the continental shelf beyond 200 M based on the recommendations of the CLCS, and any potential maritime boundary agreements made with other States at a later date.\textsuperscript{303}

4.8.2. Description of the ECS

According to Guyana, in order to establish an ECS it was sufficient for the coastal State to use a disjunction between the two \textit{formulae} lines, creating an outer envelope which would represent the maximum potential extent of entitlement over the continental shelf. If any portion of this outer envelope extended beyond 200 M, the test of appurtenance

\textsuperscript{300} Eighteen Meeting of States Parties (SPLOS/183), 13-20 June 2008. Available online at: <http://daccessdds.un.org/doc/UNDOC/GEN/N08/398/76/PDF/N0839876.pdf?OpenElement>. See “Decision of the States Parties to the Convention with regard the workload of the Commission and the ability of States, particularly developing States, to fulfill the requirements of Article 4 of Annex II of the Convention, as well as the decision contained in SPLOS/72, paragraph (a).”


\textsuperscript{302} See paragraph (b) of the “Decision of the States Parties to the Convention with regard the workload of the Commission and the ability of States, particularly developing States, to fulfill the requirements of Article 4 of Annex II of the Convention, as well as the decision contained in SPLOS/72, paragraph (a)”, Eighteen Meeting of States Parties (SPLOS/183), 13-20 June 2008.

\textsuperscript{303} Ibid. 1, para. 29
would be satisfied and the coastal State would be in a position to apply the full range of provisions contained in paragraphs 4 to 6 to determine the outer limits of the continental shelf extending beyond 200 M.\textsuperscript{304}

In spite of this affirmation, according to the Scientific and Technical Guidelines of the CLCS, it is not sufficient for the coastal State making the submission to use one or two \textit{formulae} lines to establish the maximum potential extent of entitlement over the continental shelf. The coastal State must also be able to demonstrate that the natural prolongation of its land territory to the outer edge of the continental margin extended beyond a line delineated at a distance of 200 M from the baselines from which the breadth of the territorial sea is measured.\textsuperscript{305}

Guyana relied on bathymetric and geophysical data and information to demonstrate that the seabed and subsoil of the submarine areas beyond the territorial sea to the outer edge of the continental margin were the natural prolongation of its land territory.\textsuperscript{306}

In this regard, Guyana affirmed that geophysical data was applied with the dual purpose to demonstrate the continuity of the sedimentary apron from the continental slope throughout the outer limit of the continental margin as proof that it met the test of appurtenance, and to estimate sediment thickness beyond 200 M to implement the sediment thickness formula.\textsuperscript{307} Note that, despite the fact that Guyana referred to the “continuity of the sedimentary apron” like Barbados, but unlike Suriname or Trinidad and Tobago, it did not describe the geological or geomorphological features of its ECS. Furthermore, in spite of relying on the sediment thickness formula (Gardiner formula) to

\begin{itemize}
  \item \textsuperscript{304} Ibid. 2, para. 7
  \item \textsuperscript{305} See CLCS/11, para. 2.1.2.
  \item \textsuperscript{306} Ibid. 2.1, para. 1
  \item \textsuperscript{307} Ibid. 2.1, para. 2. See also CLCS/11, para. 8.5.3. According to the Guidelines, “The Commission is guided here by para. 4(a)(i), which states that the line shall be delineated by reference to “the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent.” The Commission invokes a principle of continuity in the implementation of this provision to state that: (a) to establish fixed points a coastal State may choose the outermost location where the 1 per cent or greater sediment thickness occurs within and below the same continuous sedimentary apron; and (b) For each of the fixed points chosen the Commission expects documentation of the continuity between the sediments at those points and the sediments at the foot of the continental slope.”
\end{itemize}
justify an ECS, it did not explain the source of such sedimentary rocks or the so-called “continuity” of the sedimentary apron, as Trinidad and Tobago did in its submission (see Section 4.6.).

To conclude, in its description of the implementation of the sediment thickness formula, Guyana stated that the search for the base of the continental slope was conducted by means of evidence to the contrary provision contained in Article 76(4)(b) and in Chapter 7 of the Scientific and Technical Guidelines of the CLCS. The foot of the continental slope points were also determined by means of evidence to the contrary to the general rule of maximum change in the gradient due to the almost constant curvature shown by the continental slope and rise of Guyana.

Guyana also used bathymetric and morphological information to demonstrate that the seabed and subsoil of the submarine areas that extended beyond the territorial sea to the outer edge of the continental margin were the natural prolongation of its land territory. Guyana applied as well the other formula line, in other words, the foot of the continental slope plus 60 M.

4.8.3. Relevant provisions of Article 76

Concerning the provisions invoked to support its preliminary information, Guyana relied on Article 76(3), (4)(a)(i) and (ii), (5), (6) of UNCLOS. According to Guyana, the two affirmative formulae (Gardiner and Hedberg formulae), which allowed the delineation of the outer envelope of the formulae line as well as the 350 M constraint, which allowed the delineation of the constraint line, were applied. Lastly, the combination of the aforementioned lines allowed the delineation of the inner envelope representing the outer limit of its continental shelf.
4.8.4. Outer limits of the ECS

Guyana submitted a list of coordinates of latitude and longitude of the turning points determined in accordance with Article 76(7) that defined the outer limit of its continental shelf beyond 200 M at distances not exceeding 60 M.\textsuperscript{313}

It is worth highlighting that, unlike the submissions made by Barbados, Suriname and Trinidad and Tobago, there is no connection between the coordinates submitted by Guyana and the different \textit{formulae} and constraint lines contained in Article 76 of UNCLOS and referred to in its preliminary information.

4.8.5. Absence of disputes

Guyana, like the rest of the coastal States of the region, recognized also that its proposed continental margin was a maritime area over which there were overlapping claims and consultations among the States in the region were expected to take place soon for their delimitation. According to Guyana, there were no disputes in the region relevant to its proposed submission of data and information relating to the outer limits of the continental shelf beyond 200 M. Nevertheless, Guyana clarified that its submission was made without prejudice to the delimitation of continental shelf boundaries between States in accordance with Article 76(10).\textsuperscript{314}

Unlike Suriname and Trinidad and Tobago and, to some extent, Barbados, which held consultations with all or at least some of its neighbors, Guyana limited itself to point out that consultations among States in the region were expected to take place soon for the delimitation without further explanation.\textsuperscript{315} Guyana also affirmed that there were no disputes in the region relevant to its alleged submission without referring to paragraph

\begin{footnotesize}
\textsuperscript{313} Ibid. See Annex 10 for List of coordinates of latitude and longitude of the turning points determined in accordance with paragraph 7 of article 76 which define the outer limit of the continental shelf of the Co-operative Republic of Guyana beyond 200 nautical miles at distance not exceeding 60 nautical miles. \\
\textsuperscript{314} Ibid. 4 \\
\textsuperscript{315} CLCS/40/REV. 1, Rule 46, Annex I and Annex III (Modus operandi), specifically II
\end{footnotesize}
2(a) of Annex I to the Rules of Procedure of the CLCS. According to that paragraph, in case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States, or in other cases of unresolved land or maritime disputes, related to the submission, the CLCS shall be: (a) Inform of such disputes by the coastal States making the submission. As seen in Sections 3.2.1. and 3.3.1.3. and in Section 4.7.5., this is particularly important in light of the principle that “the land dominates the sea” and, thus, relevant to the ongoing process of Good Offices led by the Secretary-General of the UN in pursuit of the Agreement to resolve the controversy over the frontier between Venezuela and British Guiana of 1966.316

Moreover, in its preliminary information Guyana did not refer to the basic documents of the CLCS, such as the Rules of Procedures and the Scientific and Technical Guidelines, all of them dealing with issues related to disputes and, therefore, of great relevance for the CLCS when examining submissions.317 Figure 21 illustrates the preliminary information on the outer limit of the continental shelf of Guyana.

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316 See the Agreement to resolve the controversy over the frontier between Venezuela and British Guiana of 1966 online: <http://untreaty.un.org/unts/1_60000/16/31/00031501.pdf>. See comments made in Part 1, footnote 9; Part 3 regarding the arbitral award of 2006 (Barbados-Trinidad and Tobago), specifically footnote 109 and also the arbitral award of 2007 (Guyana-Suriname) on footnote 174, regarding that principle and its linkage to the ongoing process of Good Offices led by the Secretary-General of the UN in pursuit of the 1966 Geneva Agreement. See also Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001, para. 185, p. 97: “In previous cases the Court has made clear that maritime rights derive from the coastal State’s sovereignty over the land, a principle which can be summarized as “the land dominates the sea” (North Sea Continental Shelf: I.C.J. Reports 1969, p. 51, para. 96; Aegean Sea Continental Shelf; I.C.J. Reports 1978, p. 36, para. 86).” For recognition by Guyana that there are pending maritime delimitations see Guyana’s Reply, op. cit., para. 3.31, p. 45: “Map A shows that parts of the maritime space appurtenant to Guyana are also appurtenant to Venezuela, to Trinidad & Tobago, and to Barbados, as well as to Suriname.”

317 CLCS/40/REV. 1, Rule 46, Annex I, paragraph 2(a) and Annex III (Modus operandi), specifically II. Regarding the issue on disputes, see also CLCS/11, para. 9.1.4
4.8.6. Overlapping claims for an ECS

Finally, as regards the overlapping information submitted by States of the region to the CLCS over the same area, the line from Points OL-Guy-1 to OL-Guy-2 intersects with the line of Trinidad and Tobago between Points TT-FP23 and TT-FP24 as well as the
line submitted by Suriname, specifically between OL-SUR-17 and OL-SUR-18 (see Figure 22).

Figure 22 Guyana’s preliminary information: The line from Points OL-Guy-1 to OL-Guy-2 intercepts the line of Trinidad and Tobago between Points TT-FP23 and TT-FP24 as well as the line submitted by Suriname, specifically between OL-SUR-17 and OL-SUR-18.

Source: Adapted by Author from Google Earth, 2009 (http://earth.google.com/). This map is for illustrative purposes only.

Equally, the line from OL-Guy-2 to OL-Guy-3 intersects with the line of Barbados between FP2 and FP3 (see Figure 23).
Figure 23 Guyana’s preliminary information: The line from OL-Guy-2 to OL-Guy-3 intercepts the line of Barbados between FP2 and FP3
Source: Adapted by Author from Google Earth, 2009 (http://earth.google.com/). This map is for illustrative purposes only.

As mentioned in Section 4.7.4., since Guyana did not specify in its table the formulae and constraints lines used to establish its proposed outer limit of the continental shelf. Hence, it is not possible to ascertain if there is any discrepancy or discrepancies with the lines used by the other States of the region over the same area.

4.9. Conclusion

Following the arbitral award of 2006 (Barbados-Trinidad and Tobago), Barbados made its submission to the CLCS. Barbados used the sediment thickness formula line established in Article 76(4)(a)(i) (Gardiner formula) to claim an ECS, dividing it into two sections, namely the “Southern Area” and the “Northern Area”. Despite the fact that Barbados relied on that formula line, it did not refer neither to the concept of natural prolongation nor to the test of appurtenance. Additionally, there seems to be a lack of information with regard to the linkage between the “Southern Area” and the “Northern Area”. There is also some discrepancy in the “Northern Area” between the information submitted by Barbados and that submitted by France of behalf of the French Antilles. As
well, the first two coordinates given by Barbados are located southeast of the line established by the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990. In spite of this, Barbados only recognized that there were areas of potential overlapping entitlements in respect of the continental shelf beyond 200 M in the Southern Area (Guyana and Suriname), without referring to Venezuela. Furthermore, Barbados did not refer in its Executive Summary to paragraph 2(a) of Annex I to the Rules of Procedure of the CLCS dealing with absence of disputes. The submission generated reactions by neighboring States such as Suriname, and particularly by Trinidad and Tobago and Venezuela.

Equally in 2008, following the arbitral award of 2007 (Guyana-Suriname), Suriname also made its submission to the CLCS. Suriname combined the sediment thickness formula with the constraint line of 350 M. There seems to be an inconsistency between the last coordinates given by Suriname based on the 350 M constraint line and the first two coordinates given by Barbados in its “Southern Area” based on the sediment thickness formula (Gardiner formula). The origin of the discrepancy might result from the use of different geological and geomorphological information and data in the same area, or from the lack of that type of information when making the submissions.

In 2009, Trinidad and Tobago made its submission to the CLCS. It combined the sediment thickness formula with the constraint lines of 350 M and 2,500 m + 100 M. Trinidad and Tobago’s formula and constraint lines intercept the outer limits of the shelves of several States of the region.

It is worth highlighting that Trinidad and Tobago, and to some extent Suriname, referred in their submissions to the concept of the natural prolongation as well as to the test of appurtenance, while Barbados did not expressly mentioned the two concepts.

Also in 2009, Guyana submitted preliminary information to the CLCS. Guyana combined the sediment thickness formula with the foot of the continental slope plus 60 M formula. Then it applied the 350 M constraint line. Guyana’s formulae and constraint lines intercept the outer limits of the shelves of several States of the region.
Additionally, despite the fact that in several parts of the description of the outer limit of its continental shelf Guyana makes reference to the concept of natural prolongation as well as to the test of appurtenance, it limits itself to refer to different information and data but without further explaining or describing its geological or geomorphological nature.

As with regard to the absence of disputes, Guyana also recognized that its continental margin was a maritime area over which there were overlapping claims made by other States, and that consultations among the States in the region were expected to take place soon for their delimitation. Although in its preliminary information there is no reference either to paragraph 2(a) of Annex I of the Rules of Procedure of the CLCS dealing with absence of disputes or to the ongoing process of Good Offices led by the Secretary-General of the UN in pursuit of the Agreement to resolve the controversy over the frontier between Venezuela and British Guiana of 1966, according to Guyana, there were no disputes in the region relevant to its alleged submission of data and information relating to the outer limits of the continental shelf beyond 200 M.

In summary, the different information submitted by the coastal States of the region to the CLCS converge and overlap in the same area. There are important divergences among them with regard to the different formulae and constraints lines used as well as to the coordinates contained in the tables describing the outer limits of the continental shelf. In many cases, the line between two points established by coordinates used by one State cut-off the line of another State or States.

Having analyzed and highlighted in this Part the “gaps” and discrepancies of the Executive Summaries and the preliminary information made to the CLCS by the States involved in the arbitral awards of 2006 and 2007, the following Part will describe the role of the CLCS and the potential impact that those recommendations could have on the ECS of the region.
Part 5: Role of the Commission on the Limits of the Continental Shelf
5.1. Introduction

Part 4 outlined and analyzed the latest developments with respect to the submissions and submission of preliminary information made to the CLCS by four of the five States located in the Northeastern part of South America and the Caribbean facing the Atlantic Ocean. As indicated particularly in Section 4.3., some of the submissions have generated reactions by neighboring States.

The CLCS mandate is to make recommendations to Barbados, Suriname and Trinidad and Tobago on matters related to the establishment of those limits. Nevertheless, according to Article 9 of Annex II of UNCLOS, its recommendations and actions shall not prejudice matters relating to the delimitation of boundaries between States with opposite or adjacent coasts.

After having described and analyzed the evolution of the claims for an ECS by the coastal States of the region, there is a great challenge on how to deal with the different submissions made to the CLCS. Moreover, due to the discrepancies among them and to the expressed recognition that they converge and overlap in the same area, a cautious approach should be applied when examining the different information contained therein.

The present Part describes and analyzes the role and functions of the CLCS, including its purpose and relevant work to date.

5.1.1. Purpose of the CLCS

The purpose of the CLCS is to facilitate the implementation of UNCLOS in respect to the establishment of the outer limits of the continental shelf beyond 200 M from the

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Article 9, Annex II, UNCLOS: “The actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts.” See also Rule 46 and Annex I of the Rules of Procedures of the Commission.
baselines from which the breadth of the territorial sea is measured. Under UNCLOS, the CLCS shall make recommendations to coastal States on matters related to the establishment of those limits. Its recommendations and actions shall not prejudice matters relating to the delimitation of boundaries between States with opposite or adjacent coasts. The coastal State shall establish the outer limits of its continental shelf where it extends beyond 200 M based on the recommendations of the CLCS.

5.1.2. Functions of the CLCS

Annex II of UNCLOS contains the provisions governing the CLCS. As set forth in Article 3 of Annex II, the functions of the CLCS are:

(a) To consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 M, and to make recommendations in accordance with Article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea;

(b) To provide scientific and technical advice, if requested by the coastal State concerned during preparation of such data.

In accordance with Article 76(8), the CLCS 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 based on these recommendations shall be final and binding.

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319 See Article 76(8), UNCLOS: “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.”

320 Article 9, Annex II, UNCLOS. See also Rule 46 and Annex I of the Rules of Procedure of the CLCS.

321 Article 76(8), UNCLOS

322 See Annex II, UNCLOS and Scientific and Technical Guidelines of the CLCS.
5.1.3. Sessions of the CLCS

The CLCS ordinarily meets twice a year, in the spring and fall, at UN Headquarters in New York. The convening of these sessions and services to be provided are subject to approval by the UN General Assembly in its annual resolutions on oceans and the law of the sea.

The meetings of the CLCS, its subcommissions and subsidiary bodies are held in private, unless the CLCS decides otherwise.\(^{323}\)

The information on the progress in the work of the CLCS at its sessions is contained in the statements by the Chairman.

5.2. The Northeastern part of South America facing the Atlantic Ocean before the CLCS

In 2008, the CLCS received the submissions made by Barbados and Suriname. Shortly after, through the Secretary-General of the UN, neighboring coastal States of the region reacted to those submissions.

Whilst in general terms the submission made by Suriname did not generate any controversial reaction either by France or Trinidad and Tobago, the submission made by Barbados gave rise to different types of reactions by its neighboring States, particularly by Trinidad and Tobago and Venezuela. This situation may have its origin in the fact that Barbados, unlike Suriname, did not hold consultations with all its neighbors prior to making its submission to the CLCS.\(^{324}\)

\(^{323}\) CLCS/40/REV. 1, Rule 23 and Annex II of the Rules of Procedure of the CLCS

\(^{324}\) The Note Verbale from Trinidad and Tobago is available at: <http://www.un.org/Depts/los/clcs_new/submissions_files/brb08/tto_aug2008.pdf>: “The Government of the Republic of Trinidad and Tobago wishes to place on record that Barbados has held no consultations with the Republic of Trinidad and Tobago on this subject as the rules of the Commission require.” The Note Verbale from Venezuela is available at: <http://www.un.org/Depts/los/clcs_new/submissions_files/brb08/ven_sept_2008s.pdf>: “In addition, the Ministry wishes to draw attention to the fact that Barbados did not confer with the Bolivarian Republic of Venezuela on its submission, which is contrary to the rules of procedure of the Commission.”
As recognized by virtually all coastal States in the region, there are pending maritime delimitations, including with regard to the continental shelf, in an area covered by the submissions made by Barbados and Suriname, particularly in the area referred to in Barbados’ submission as the “Southern Area.”

Rule 46 of the Rules of Procedure of the CLCS:

1. In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States or in other cases of unresolved land or maritime disputes, submissions may be made and shall be considered in accordance with Annex I to these Rules. 2. The actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between States.

In reaction to Barbados’ submission, Suriname, Trinidad and Tobago and Venezuela, reminded the CLCS that, in accordance with UNCLOS and the Rules of Procedure of the CLCS, the actions of the CLCS should not prejudice matters relating to the

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325 The letter from Suriname is available at: <http://www.un.org/Depts/los/clcs_new/submissions_files/brb08/sur_aug_2008.pdf>: “Suriname has a continental shelf entitlement in the area referred to in the Barbadian Executive Summary as the Southern Area.” The Note Verbale from Trinidad and Tobago is available at: <http://www.un.org/Depts/los/clcs_new/submissions_files/brb08/tto_aug2008.pdf>: “The Government of the Republic of Trinidad and Tobago, therefore, for the benefit, firstly of the Commission and secondly of the States Parties to UNCLOS wishes to stress that it has every intention of making a submission to the Commission in accordance with the rules established therefore (…) The Government of the Republic of Trinidad and Tobago wishes to put the Commission on notice that in its proposed submission, there will be areas of potential overlapping entitlements in respect of the continental shelf beyond 200 M with certain neighbouring coastal States, including Barbados.(…) Any objection by Barbados to the Trinidad and Tobago submission will cause a dispute to arise in respect of all of the area of overlapping entitlement between Trinidad and Tobago and Barbados. Any such dispute shall have crystallized from the date of receipt of this correspondence which directly controverts the position taken by Barbados in its Executive Summary on the subject of Trinidad and Tobago’s entitlement to extend its continental shelf jurisdiction beyond 200 M from the baselines from which the breadth of the territorial sea is measured.” The Note Verbale from Venezuela is available at: <http://www.un.org/Depts/los/clcs_new/submissions_files/brb08/ven_sept_2008.pdf>: “The Bolivarian Republic of Venezuela, in accordance with customary international law and irrespective of the fact that it is not a party to the United Nations Convention on the Law of the Sea, has rights over the continental shelf in the area referred to in the summary of Barbados as the “southern area”. These rights are exclusive and do not depend on occupation, effective or notional. (…) The Government of the Bolivarian Republic of Venezuela reserves all of its rights pursuant to international law, including the right to make future objections and comments regarding the submission of Barbados.” See also the Agreement to resolve the controversy over the frontier between Venezuela and British Guiana of 1966 available at: [http://untreaty.un.org/unts/1_60000/16/31/00031501.pdf].

326 Apart from CLCS/40/REV. 1, Annex I see also Article 76(10) of UNCLOS: “The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.”
delimitation of boundaries between that State and its neighboring States in the Atlantic Ocean.\textsuperscript{327}

The submission made by Trinidad and Tobago and the preliminary information submitted by Guyana to the CLCS in 2009, together with the Venezuelan Note of 17 September 2008, have further complicated the already difficult situation of the study area. It is a fact that along the shoulder of South America that looks directly onto the continental shelf appertaining to this part of mainland, the submarine projections of the landmass of Trinidad and Tobago, Venezuela, Guyana and France (French Guiana) converge and overlaps.

Apart from the overlapping claims for an ECS, in the study area there are currently existing disputes and potential ones. With regard to the existing disputes, the preliminary information presented by Guyana to the CLCS did not refer to the ongoing process of Good Offices led by the UN Secretary-General in pursuit of the Agreement to resolve the controversy over the frontier between Venezuela and British Guiana of 1966. According to paragraph 2(a) of Annex I of the Rules of Procedure, in case there is an unresolved land dispute related to the submission, the CLCS shall be informed of such dispute by the coastal State making the submission.\textsuperscript{328} As to regards potential disputes, in its Note reacting to Barbados’s submission, Trinidad and Tobago asserted that should Barbados object to its submission, it would consider that a dispute had emerged.\textsuperscript{329}

In summary, as recognized by all States in the region, there is an area in the Atlantic Ocean, off the northeast shoulder of South America, where the extended continental shelf claims of Barbados, Guyana, Suriname, Trinidad and Tobago and Venezuela, converge and overlap. There are currently some outstanding questions remaining in relation to bilateral delimitation of the continental shelf in that area, which the CLCS

\textsuperscript{327} Article 9, Annex II, UNCLOS
\textsuperscript{328} See Agreement to resolve the controversy over the frontier between Venezuela and British Guiana of 1966. See online: <http://untreaty.un.org/unts/1_60000/16/31/00031501.pdf>
\textsuperscript{329} See paragraph 6 of Trinidad and Tobago’s Note No. 173 of 11 August 2008 on line See online: <http://www.un.org/Depts/los/clcs_new/submissions_files/brb08/tto_aug2008.pdf>
should take into account when examining the information contained in the submissions made by Barbados, Suriname, Trinidad and Tobago and Guyana (once completed for the latter).

5.3. Conclusion

Due to the complex situation surrounding the submissions made by Barbados, Suriname, Trinidad and Tobago, the preliminary information submitted by Guyana and the Note of Venezuela in reaction to Barbados’ submission, the CLCS should carefully examine the complex situation in the area. To this end, taking into account its relevant documents, the CLCS should analyze the existence of inconsistencies and “gaps” regarding the different information, *formulae* and constraint lines used by the States of the region over the same area. A number of issues should be borne in mind:

- In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States or in other cases of unresolved land or maritime disputes, submissions may be made and shall be considered in accordance with Annex I to the Rules of Procedure of the CLCS,\(^{330}\)

- The actions of the CLCS shall not prejudice matters relating to the delimitation of boundaries between States;\(^ {331}\)

- The competence with respect to matters regarding disputes which may arise in connection with the establishment of the outer limits of the continental shelf rests with States; and\(^ {332}\)

- In cases where a land or maritime dispute exists, the CLCS should not consider and qualify a submission made by any of the States concerned in

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\(^{330}\) CLCS/40/REV. 1, Rule 46, para. 1. Annex I of the Rules of Procedure: “Submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes”

\(^{331}\) CLCS/40/REV. 1, Rule 46, para. 2

\(^{332}\) CLCS/40/REV. 1, Annex I, para. 1
the dispute. However, the CLCS may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute.\footnote{333}{CLCS/40/REV. 1, Annex I, para. 5(a)}

Finally, should the CLCS decide to proceed to examine the submissions of the different coastal States of the region, those States should be able to demonstrate that they can effectively satisfy the test of appurtenance as the first step to claim an ECS and as required by the Scientific and Technical Guidelines and the Rules of Procedure of the CLCS. This implies that those States that have already submitted information should be able to demonstrate that there is geological continuity of the continental shelf as well as continuity of the sedimentary apron from their continental slope throughout the outer limit of the continental margin.\footnote{334}{CLCS/40/REV. 1, Annex III (Modus operandi), III, para. 5(1)(a)}
Part 6: Conclusions
Customary international law provides that the continental shelf comprises the seabed and subsoil that are the natural prolongation of the coastal State beyond its territorial sea, up to the outer edge of the continental margin. In cases where the said continental margin does not reach a distance of 200 M from the baselines from which the breadth of the territorial sea is measured, the continental shelf is measured up to 200 M from the baselines. If geological and geomorphological information and data allowed it, then coastal States may extend their continental shelf beyond 200 M, and establish an extended continental shelf. For this purpose, the coastal State shall delineate the outer limits of its ECS in accordance with the provisions contained in Article 76 of UNCLOS.

The institution of the continental shelf is a long-standing one and precedes UNCLOS. Venezuela and Trinidad and Tobago made an early contribution to the development of the law of the sea relating to the continental shelf when in 1942 Venezuela and the United Kingdom (Trinidad) signed the historic Gulf of Paria Treaty that delimited the submarine areas of that Gulf. The treaty, to which Trinidad and Tobago succeeded upon independence in 1962, was the first bilateral agreement ever signed by any two States regarding the delimitation of the seabed and subsoil beyond the territorial sea. That Treaty ceased to have effect in 1991 upon the entry into force of the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990, which reflects current international law as regards the definition of the continental shelf contained in Article 76 of UNCLOS.

The North Sea Continental Shelf Cases of 1969 can still be regarded as a milestone with regard to the continental shelf as they shed light, *inter alia*, on the concept of natural prolongation and the test of appurtenance, in other words, on the importance of geological and geomorphological features of the continental shelf (scientific and technical criteria). The concept of natural prolongation and the test of appurtenance are both key elements for the establishment of the continental shelf, particularly the extended continental shelf located beyond the 200 M.

The Guinea-Guinea Bissau arbitral award of 1985 also made a significant contribution to the delimitation of the continental shelf. It held that in order for the delimitation to be suitable for equitable integration into the existing delimitations in the region, as well as
into future delimitations which would be reasonable to imagine from a consideration of equitable principles and the most likely assumptions, it was necessary to consider how all these delimitations fit in with the general configuration of the coastline.

In 2006, during the arbitral proceedings between Barbados and Trinidad and Tobago for the establishment of a maritime boundary, Barbados alleged that it was constrained from reaching its full 200 M EEZ entitlement and any full ECS claim by the presence of, inter alia, Venezuela. In spite of this assertion, Barbados did not consult with Venezuela before making its submission to the CLCS in 2008.

Additionally, despite the fact that during that arbitration the Tribunal decided that its jurisdiction included the delimitation of the maritime boundary in relation to that part of the continental shelf extending beyond 200 M, it did not take into account geological and geomorphological features (scientific and technical criteria) as it did not give any weight to the concept of natural prolongation to justify its award. The Tribunal supported its view affirming that, with very few exceptions, the quest for neutral criteria of a geographical character prevailed in the end over area-specific criteria such as geomorphological aspects. Furthermore, in spite of expressly referring to Article 56 of UNCLOS regarding the rights, jurisdiction and duties of coastal States in the EEZ, the Tribunal did not refer to paragraph 3 of Article 56 which states: “The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI. [Continental Shelf].”

In 2007, during the arbitral proceedings between Guyana and Suriname for the establishment of a maritime boundary, Guyana did not refer to the ongoing process of Good Offices led by the UN Secretary-General in pursuit of the Agreement to resolve the controversy over the frontier between Venezuela and British Guiana of 1966, hence, failing to take into account the well-established principle that “the land dominates the sea.”

Unlike the award of 2006, the Tribunal in the Guyana-Suriname arbitration was not invited to delimit maritime areas beyond 200 M. Both Parties reserved their rights under
Article 76(4) of UNCLOS. Thus, the Tribunal was not concerned with matters concerning the delimitation of the outer continental shelf of the Parties.

Following the awards of 2006 and 2007, the coastal States engaged in those arbitrations proceeded to make their submissions to the CLCS. Article 76 of UNCLOS provides detailed procedures to delineate and submit information and data on the outer limits of the continental shelf. At the time of writing, three coastal States of the northeastern part of South America and the Caribbean facing the Atlantic Ocean namely, Barbados, Suriname and Trinidad and Tobago, have made submissions to the CLCS and one, Guyana, has submitted preliminary information.

In 2008 Barbados made its submission to the CLCS. Barbados used the sediment thickness formula line established in Article 76(4)(a)(i) (Gardiner formula) to claim an ECS, dividing it into two sections, namely the “Southern Area” and the “Northern Area”. Despite the fact that Barbados relied on that formula line, it did not refer either to the concept of natural prolongation or to the test of appurtenance. Additionally, there seems to be a lack of information with regard to the linkage between the “Southern Area” and the “Northern Area”. There is also some discrepancy in the “Northern Area” between the information submitted by Barbados and that submitted by France of behalf of the French Antilles. As well, the first two coordinates given by Barbados are located southeast of the line established by the Venezuela-Trinidad and Tobago Delimitation Treaty of 1990. In spite of this, Barbados only recognized that there were areas of potential overlapping entitlements in respect of the continental shelf beyond 200 M in the Southern Area (Guyana and Suriname), without referring to Venezuela. Furthermore, Barbados did not refer in its Executive Summary to paragraph 2(a) of Annex I to the Rules of Procedure of the CLCS dealing with absence of disputes. The submission generated reactions by neighboring States such as Suriname, and particularly by Trinidad and Tobago and Venezuela.

Equally in 2008, following the arbitral award of 2007 (Guyana-Suriname), Suriname made also its submission to the CLCS. Suriname combined the sediment thickness formula with the constraint line of 350 M. There seems to be an inconsistency between
the last coordinates given by Suriname based on the 350 M constraint line and the first two coordinates given by Barbados in its “Southern Area” based on the sediment thickness formula (Gardiner formula). The origin of the discrepancy might result from the use of different geological and geomorphological information and data in the same area, or from the lack of that type of information when making the submissions.

In 2009, Trinidad and Tobago made its submission to the CLCS. It combined the sediment thickness formula with the constraint lines of 350 M and 2,500 m + 100 M. Trinidad and Tobago’s formula and constraint lines intercept the outer limits of the shelves of several States of the region. It is worth highlighting that Trinidad and Tobago and to some extent Suriname, referred in their submissions to the concept of the natural prolongation as well as to the test of appurtenance, while Barbados did not expressly mentioned any of the two concepts.

Also in 2009, Guyana submitted preliminary information to the CLCS. Guyana combined the sediment thickness formula with the foot of the continental slope plus 60 M formula. Then it applied the 350 M constraint line. Guyana’s formulae and constraint lines intercept the outer limits of the shelves of Barbados, Suriname and Trinidad and Tobago. Additionally, despite the fact that in several parts of the description of the outer limit of its continental shelf Guyana makes reference to the concept of natural prolongation as well as to the test of appurtenance, it limits itself to refer to different information and data but without further explaining or describing its geological or geomorphological nature.

As with regard the absence of disputes, Guyana also recognized that its continental margin was a maritime area over which there were overlapping claims made by other States, and that consultations among the States in the region were expected to take place soon for their delimitation. Although in its preliminary information there is no reference either to paragraph 2(a) of Annex I of the Rules of Procedure of the CLCS dealing with absence of disputes or to the ongoing process of Good Offices led by UN Secretary-General in pursuit of the Agreement to resolve the controversy over the frontier between Venezuela and British Guiana of 1966, according to Guyana, there
were no disputes in the region relevant to its submission of data and information relating to the outer limits of the continental shelf beyond 200 M.

The different information submitted by the coastal States of the region to the CLCS converge and overlap in the same area. There are important divergences among them with regard to the different formulae and constraints lines used describing the outer limits of the continental shelf. In many cases, the line between two points established by coordinates used by one State cut-off the line of another State or States.

As recognized by several States in the information submitted to the CLCS, there is an area of continental shelf in the Atlantic Ocean off the northeast shoulder of South America where the extended continental shelf claims of Barbados, Guyana, Suriname, Trinidad and Tobago and Venezuela, converge and overlap. Therefore, there are currently some outstanding questions remaining in relation to bilateral delimitation of the continental shelf in that area.

As a result, some of these submissions have generated reactions by neighboring States in the region and future ones might be expected. An example of such reactions is the Note sent by Venezuela to the UN Secretary-General reacting to Barbados’ submission.

Bearing in mind the particular situation that surrounds the submissions made by Barbados, Suriname, Trinidad and Tobago as well as the preliminary information submitted by Guyana and the Note of Venezuela in reaction to Barbados’ submission, the CLCS should proceed cautiously to analyze the complex situation in the area taking into account, on the one hand, the relevant documents of the CLCS and, on the other, the existence of inconsistencies as regards the different information, formulae and constraint lines used by the different States of the region over the same area.

Subsequently, the CLCS is currently faced with an important challenge, not only as a result of its workload, but also as regards the examination of the information already submitted by the coastal States of the abovementioned region. In conducting such examination, the CLCS will have to overcome challenges of different nature.
Lastly, in cases where a land or maritime dispute exists, the CLCS should not consider and qualify a submission made by any of the States concerned in the dispute. However, the CLCS may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute. The submissions made before the CLCS and the recommendations approved by the CLCS thereon should not prejudice the position of States which are parties to a land or maritime dispute.
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N° 4829.
GRANDE-BRETAGNE
ET IRLANDE DU NORD
ET VENEZUELA
Traité relatif aux régions sous-marines du golfe de Paria. Signé à Caracas, le 26 février 1942.

Textes officiels anglais et espagnol communiqués par le secrétaire d'Etat aux Affaires étrangères de Sa Majesté en Grande-Bretagne. L'enregistrement a eu lieu le 2 octobre 1944.

GREAT BRITAIN
AND NORTHERN IRELAND
AND VENEZUELA

English and Spanish official texts communicated by His Majesty's Secretary of State for Foreign Affairs in Great Britain. The registration took place October 2nd, 1944.

122 Société des Nations — Recueil des Traités. 1944

No. 4829. — TREATY 1 BETWEEN HIS MAJESTY IN RESPECT OF THE UNITED KINGDOM AND THE PRESIDENT OF THE UNITED STATES OF VENEZUELA RELATING TO THE SUBMARINE AREAS OF THE GULF OF PARIA. SIGNED AT CARACAS, FEBRUARY 26th, 1942. ______

His MAJESTY THE KING OF GREAT BRITAIN, IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA, and THE PRESIDENT OF THE UNITED STATES OF VENEZUELA,

Desiring in a spirit of goodwill to make provision for and to define as between themselves their respective interests in the submarine areas of the Gulf of Paria,

Have decided to conclude a Treaty for that purpose and, to that end, have named as their Plenipotentiaries :

His MAJESTY THE KING OF GREAT BRITAIN, IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA (hereinafter referred to as His Majesty The King), FOR THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND: Mr. Donald ST. CLAIR GAINER, C.M.G., O.B.E., his Envoy Extraordinary and Minister Plenipotentiary at Caracas; THE PRESIDENT OF THE UNITED STATES OF VENEZUELA: Dr. Caracciolo PARRA-PÉREZ, Minister of Foreign Relations:

Who, having communicated to each other their full powers, found in good and due form, have agreed as follows:

Article I.

In this Treaty the term "submarine areas of the Gulf of Paria" denotes the sea-bed and sub-soil outside of the territorial waters of the High Contracting Parties to one or the other side of the lines A-B, B-Y and Y-X.

Article 2.

(1) His Majesty The King declares that he for his part will not assert any claim to sovereignty or control over those parts of the submarine areas of the Gulf of Paria which lie westerly of the line A-B, or southerly of the lines E-Y and Y-X respectively described in Article 3 of the present Treaty, and that he will recognise any rights of sovereignty or control which have been or may hereafter be lawfully acquired by the United States of Venezuela over the said parts of the submarine areas of the Gulf of Paria.

(2) The President of the United States of Venezuela declares that he for his part will not assert any claim to sovereignty or control over those parts of the submarine areas of the Gulf of Paria which lie easterly of the line A-B or northerly of the lines B-Y and Y-X respectively, described in Article 3 of the present Treaty, and that he will recognise any rights of sovereignty or control which have been or may hereafter be lawfully acquired by His Majesty The King over the said parts of the submarine areas of the Gulf of Paria.

Article 3.

The lines A-B, B-Y and Y-X mentioned in the preceding Article are drawn on the annexed map* and are defined as follows:

Line A-B runs from Point A, which is the intersection of the central meridian of the Island of Patos with the southern limit of the territorial waters of the said Island, the approximate coordinates of which are: Latitude 10° 35' 04" N., Longitude 61° 51' 53" W. From there the line runs straight to Point B which is situated at the limit of the territorial waters of Venezuela at the point of their intersection with the meridian of 62° 05' 08" W., the approximate latitude of which is 10° 02' 24" N.

Line B-Y runs from Point B, already established, and follows the limits of the territorial waters of Venezuela to Point Y, where the said limits intersect the parallel of 9° 57' 30" N., the approximate longitude of which is 61° 56' 40" W.

Line Y-X runs from Point Y, already established, and follows the said parallel of 9° 57' 30" N. to Point X, situated on the meridian of 61° 30' 00" W.
The longitude of the central meridian of the Island of Patos to which this Article refers shall be determined by taking the mathematical half of the most eastern and the most western longitudes of the said Island.

Should the straight lines A-B or Y-X described in this Article intersect in their course the outside limit of the territorial waters of either of the two High Contracting Parties, the dividing line shall follow along the said limit until it reaches again the intersecting straight line in conformity with the stipulations in Articles 1 and 5 of this Treaty, which exclude the bed of the sea and the subsoil of territorial waters.

The co-ordinates of points A, B and Y which are here given approximately shall be determined with exactness by the Commission provided for in Article 4 of this Treaty.

**Article 4.**

(1) The High Contracting Parties shall, as soon as practicable after the coming into force of this Treaty, appoint a mixed Commission to take all necessary steps to demarcate the lines A-B, B-Y and Y-X by means of buoys or other visible methods on the surface of the sea or on the land as the case may be. Any buoys or other means employed shall, however, conform in all respects to the provisions of Article 6 of this Treaty.

(2) The manner in which this mixed Commission shall be constituted and the instructions to which it shall be subject for the fulfilment of its duties shall be laid down in a special protocol or by an exchange of notes.

**Article 5.**

This Treaty refers solely to the submarine areas of the Gulf of Paria, and nothing herein shall be held to affect in any way the status of the islands, islets or rocks above the surface of the sea together with the territorial waters thereof.

**Article 6.**

Nothing in this Treaty shall be held to affect in any way the status of the waters of the Gulf of Paria or any rights of passage or navigation on the surface of the seas outside the territorial waters of the Contracting Parties. In particular, passage or navigation shall not be closed or be impeded by any works or installations which may be erected, which shall be of such a nature and shall be so constructed, placed, marked, buoyed and lighted, as not to constitute a danger or obstruction to shipping.

**Article 7.**

Each of the High Contracting Parties shall take all practical measures to prevent the exploitation of any submarine areas claimed or occupied by him in the Gulf from causing the pollution of the territorial waters of the other by oil, mud or any other fluid or substance liable to contaminate the navigable waters or the foreshore and shall concert with the other to make the said measures as effective as possible.

**Article 8.**
Each of the High Contracting Parties shall cause to be inserted in any concession which may be granted for the exploitation of submarine areas in the Gulf of Paria stipulations for securing the effective observance of the two preceding Articles, including a requirement for the use by the concessionaire of modern equipment, and shall cause the operation of any such concession to be supervised in order to ensure that the provisions of the present Treaty are complied with.

Article 9.

All differences between the High Contracting Parties relating to the interpretation or execution of this Treaty shall be settled by such peaceful means as are recognised in International Law.

Article 10.

The present Treaty shall be ratified in conformity with the respective laws of the High Contracting Parties and shall come into force upon the exchange of ratifications which shall take place in London.

In witness whereof the above-named Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in duplicate in the English and Spanish languages at Caracas, the 26th day of February, 1942.

(L. S.) D. ST. CLAIR GAINER.
(L. S.) C. PARRA-PÉREZ.

1 The exchange of ratifications took place in / L'échange des ratifications a eu lieu à Londres, London, September 22nd, 1942, le 22 septembre 1942.

Came into force September 22nd, 1942. Entre en vigueur le 22 septembre 1942.

Annex 2
By the President of the United States of America a Proclamation:

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.
DONE at the City of Washington this twenty-eighth day of September, in the year of our Lord nineteen hundred and forty-five, and [SEAL] of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:
DEAN ACHESON
Acting Secretary of State

Convention on the Continental Shelf
Done at Geneva on 29 April 1958

The States Parties to this Convention
Have agreed as follows:

Article 1

For the purpose of these articles, the term “continental shelf” is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Article 2

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 of this article 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, or make a claim to the continental shelf, 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 these articles consist of the mineral and other non-living resources of the seabed 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 seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Annex 4

10 December 1982

PART VI

CONTINENTAL SHELF

Article 76

Definition of the continental shelf

1. The continental shelf of a coastal State comprises the seabed 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 seabed 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 coordinates 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.

Article 77

Rights of the coastal State over the continental shelf

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 seabed 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 seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

ANNEX II. COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

Article 1

In accordance with the provisions of article 76, a Commission on the Limits of the Continental Shelf beyond 200 nautical miles shall be established in conformity with the following articles.

Article 2

1. The Commission shall consist of 21 members who shall be experts in the field of geology, geophysics or hydrography, elected by States Parties to this Convention from among their nationals, having due regard to the need to ensure equitable geographical representation, who shall serve in their personal capacities.

2. The initial election shall be held as soon as possible but in any case within 18 months after the date of entry into force of this Convention. At least three months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties, inviting the submission of nominations, after appropriate regional consultations, within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated and shall submit it to all the States Parties.

3. Elections of the members of the Commission shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Commission shall be those nominees who obtain a two-thirds majority of the votes of the representatives of States Parties present and voting. Not less than three members shall be elected from each geographical region.

4. The members of the Commission shall be elected for a term of five years. They shall be eligible for re-election.
5. The State Party which submitted the nomination of a member of the Commission shall defray the expenses of that member while in performance of Commission duties. The coastal State concerned shall defray the expenses incurred in respect of the advice referred to in article 3, paragraph 1(b), of this Annex. The secretariat of the Commission shall be provided by the Secretary-General of the United Nations.

Article 3

1. The functions of the Commission shall be:

(a) to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea;

(b) to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data referred to in subparagraph (a).

2. The Commission may cooperate, to the extent considered necessary and useful, with the Intergovernmental Oceanographic Commission of UNESCO, the International Hydrographic Organization and other competent international organizations with a view to exchanging scientific and technical information which might be of assistance in discharging the Commission's responsibilities.

Article 4

Where a coastal State intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nautical miles, it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State. The coastal State shall at the same time give the names of any Commission members who have provided it with scientific and technical advice.

Article 5

Unless the Commission decides otherwise, the Commission shall function by way of sub-commissions composed of seven members, appointed in a balanced manner taking into account
the specific elements of each submission by a coastal State. Nationals of the coastal State making
the submission who are members of the Commission and any Commission member who has
assisted a coastal State by providing scientific and technical advice with respect to the
delineation shall not be a member of the sub-committee dealing with that submission but has
the right to participate as a member in the proceedings of the Commission concerning the said
submission. The coastal State which has made a submission to the Commission may send its
representatives to participate in the relevant proceedings without the right to vote.

Article 6

1. The sub-committee shall submit its recommendations to the Commission.

2. Approval by the Commission of the recommendations of the sub-committee shall be by a
majority of two thirds of Commission members present and voting.

3. The recommendations of the Commission shall be submitted in writing to the coastal State
which made the submission and to the Secretary-General of the United Nations.

Article 7

Coastal States shall establish the outer limits of the continental shelf in conformity with the
provisions of article 76, paragraph 8, and in accordance with the appropriate national procedures.

Article 8

In the case of disagreement by the coastal State with the recommendations of the Commission,
the coastal State shall, within a reasonable time, make a revised or new submission to the
Commission.

Article 9

The actions of the Commission shall not prejudice matters relating to delimitation of boundaries
between States with opposite or adjacent coasts.

Treaty between the Republic of Trinidad and Tobago and the Republic of Venezuela on the delimitation of marine and submarine areas, 18 April 1990

The Government of the Republic of Trinidad and Tobago and the Government of the Republic of Venezuela, hereinafter referred to as the Contracting Parties;

Resolving in a true spirit of cooperation and friendship to settle permanently as good neighbours the limits of the marine and submarine areas within which the respective Governments exercise sovereignty, sovereign rights and jurisdiction through the establishment of a precise and equitable maritime boundary between the two countries;

Taking into account the rules of international law and the development of the new law of the sea;

Have agreed as follows:

Article 1

The maritime boundary between the Republic of Trinidad and Tobago and the Republic of Venezuela referred to in this Treaty is the maritime boundary with respect to the territorial seas, the Continental Shelves and the Exclusive Economic Zones and to any other marine and submarine areas which have been or might be established by the Contracting Parties in accordance with International Law.

Article 2

1. The delimitation lines with respect to the marine and submarine areas in the Caribbean, the Gulf of Paria, the Serpent's Mouth and the Atlantic Ocean are geodesics connecting the following geographical coordinates:
   1. Latitude 11° 10' 30" North; Longitude 61° 43' 46" West
   2. Latitude 10° 54' 40" North; Longitude 61° 43' 46" West
   3. Latitude 10° 54' 15" North; Longitude 61° 43' 52" West
   4. Latitude 10° 48' 41" North; Longitude 61° 45' 47" West
   5. Latitude 10° 47' 38" North; Longitude 61° 46' 17" West
   6. Latitude 10° 47' 52" North; Longitude 61° 48' 10" West
   7. Latitude 10° 35' 20" North; Longitude 61° 48' 10" West
   8. Latitude 10° 35' 19" North; Longitude 61° 51' 45" West
   9. Latitude 10° 02' 46" North; Longitude 62° 04' 59" West
  10. Latitude 10° 00' 29" North; Longitude 61° 58' 25" West
  11. Latitude 09° 59' 12" North; Longitude 61° 51' 18" West
  12. Latitude 09° 59' 12" North; Longitude 61° 37' 50" West
  13. Latitude 09° 58' 12" North; Longitude 61° 30' 00" West
  14. Latitude 09° 52' 33" North; Longitude 61° 13' 24" West
  15. Latitude 09° 50' 55" North; Longitude 60° 53' 27" West
  16. Latitude 09° 49' 55" North; Longitude 60° 39' 51" West
  17. Latitude 09° 53' 26" North; Longitude 60° 16' 02" West
18. Latitude 09° 57' 17" North; Longitude 59° 59' 16" West
19. Latitude 09° 58' 11" North; Longitude 59° 55' 21" West
20. Latitude 10° 09' 59" North; Longitude 58° 49' 12" West
21. Latitude 10° 16' 01" North; Longitude 58° 49' 12" West
and from point 1 northerly in constant and true direction following the meridian 61° 43' 46" West up to the point at which it meets the jurisdiction of a third State, and from point 21 along an azimuth of 067 degrees up to the outer limit of the Exclusive Economic Zone and thereafter towards point 22, with the following geographic coordinates: Latitude 11° 24' 00" North and Longitude 56° 06' 30" West which is situated approximately on the outer edge of the continental margin which delimits the national jurisdiction of the Republic of Trinidad and Tobago and of the Republic of Venezuela and the International Seabed Area which is the common heritage of mankind.

2. Both Parties reserve the right, in case of determining that the outer edge of the continental margin is located closer to 350 nautical miles from the respective baselines, to establish and negotiate their respective rights up to this outer edge in conformity with the provisions of International Law; no provision of the present Treaty shall in any way prejudice or limit these rights or the rights of third parties.

Article 3

It is understood by the Contracting Parties that in the Caribbean Sea and the Gulf of Paria, the Republic of Trinidad and Tobago to the West and South of the said maritime boundary and the Republic of Venezuela to the East and North of that boundary; and in the Atlantic, the Republic of Trinidad and Tobago to the South of the said maritime boundary, and the Republic of Venezuela to the North of that boundary, shall not, for any purpose, claim or exercise sovereignty, sovereign rights or jurisdiction over the marine and submarine areas to which article 1 of the present Treaty refers.

Article 4

1. The positions of the aforementioned points have been defined by latitude and longitude of the 1956 Provisional South American Datum (International Ellipsoid 1924).
2. The limits and points previously indicated have been drawn solely by way of illustration on the Map accepted by the parties and annexed to this Treaty.

Article 5

1. The Contracting Parties agree to create a Trinidad and Tobago/Venezuela Mixed Demarcation Commission.
   The Commission shall be responsible for the actual demarcation of the points and lines referred to above to the extent possible and all related activities.
2. The demarcation referred to in paragraph 1 of this article shall be effected by such aids to navigation as the Commission deems appropriate.
3. The Commission shall be comprised of three (3) representatives of each country together with such advisors as may be deemed necessary and whose names shall be duly communicated through diplomatic channels.
4. The Commission shall convene within three (3) months following the date of the entry into force of the present Treaty and thereafter whenever requested by either Contracting Party or by the Commission itself. Meetings of the Commission shall be held alternatively in the Republic of Trinidad and Tobago and the Republic of Venezuela.

**Article 6**

Without prejudice to the rights of navigation and overflight recognized under International Law in the other areas under the sovereignty and/or jurisdiction of the Contracting Parties, in the existing strait between the island of Trinidad and the island of Tobago, Venezuelan vessels and aircraft shall enjoy freedom of navigation and overflight for the sole purpose of expeditious and uninterrupted transit through the maritime areas in question, which shall henceforth be termed the right of transit passage. Transit passage does not preclude passage through or over maritime areas for the purpose of entering or leaving Trinidad and Tobago subject to the conditions regulating entry into ports or similar access conditions. In the other straits which exist in the Gulf of Paria, innocent passage shall apply.

**Article 7**

**Unity of deposits**

If any single geological petroleum structure or petroleum field, or any single geological structure or field of any other mineral deposit, including sand and gravel, extends across the delimitation line and the part of such structure or field which is situated on one side of the delimitation line is exploitable, wholly or in part, from the other side of the said line, the Contracting Parties shall, after holding the appropriate technical consultations, seek to reach agreement as to the manner in which the structure or field shall be most effectively exploited and the manner in which the costs and benefits arising from such exploitation shall be apportioned.

**Article 8**

In cases where either of the two Contracting Parties decides to carry out or to permit drilling activities for exploration or exploitation in areas five hundred metres (500m) away from the delimitation line, such activities should be made known to the other Party.

**Article 9**

The Contracting Parties shall adopt all measures for the preservation of the marine environment in the marine areas to which the present Treaty refers. Consequently, the Parties agree:

(a) to provide the other party with information on the legal provisions and on its experience in the preservation of the marine environment;

(b) to provide information on the authorities which are competent for ascertaining and taking decisions on pollution matters;

(c) to inform each other about any indication of actual, imminent or potential pollution of a serious nature which occurs in the maritime frontier zone.
Article 10
Settlement of disputes

Any difference or dispute arising out of the interpretation or application of this Treaty shall be settled peacefully by direct consultation or negotiation between the Contracting Parties.

Article 11

1. This Treaty shall be subject to ratification and shall enter into force from the date of the exchange of instruments of ratification which shall take place in Port of Spain as soon as possible.
2. The Treaty between His Majesty in respect of the United Kingdom and the President of the United States of Venezuela relating to the submarine areas of the Gulf of Paria signed at Caracas on 26 February 1942 and the Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the Republic of Venezuela on the delimitation of marine and submarine areas (First Phase) signed at Port of Spain on 4 August 1989 shall cease to have effect between the Contracting Parties on their becoming bound by this Treaty.

DONE in the City of Caracas, on the 18th day of the month of April, One Thousand Nine Hundred and Ninety in duplicate in the English and Spanish languages, both texts being equally authoritative.

Annex 6
EXCLUSIVE ECONOMIC ZONE CO-OPERATION TREATY BETWEEN THE
STATE OF BARBADOS AND THE REPUBLIC OF GUYANA
CONCERNING THE EXERCISE OF JURISDICTION IN THEIR
EXCLUSIVE ECONOMIC ZONES IN THE AREA OF BILATERAL
OVERLAP WITHIN EACH OF THEIR OUTER LIMITS AND BEYOND
THE OUTER LIMITS OF THE EXCLUSIVE ECONOMIC ZONES OF
OTHER STATES

The State of Barbados and the Republic of Guyana (hereinafter referred to as the Parties);
Reaffirming the friendly relations between them;
Mindful of their long-standing spirit of bilateral co-operation and good neighbourliness;
Emphasizing the universal and unified character of the United Nations Convention on the Law of
the Sea (hereinafter referred to as the Convention) and its fundamental importance for the
maintenance and strengthening of international peace and security, as well as for the sustainable
development of the oceans and seas;
Recognising that the delimitation of the exclusive economic zone between States with opposite
or adjacent coasts shall be effected by agreement on the basis of international law, as referred to
in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable
solution;
Recognising the relevance and applicability of paragraph 3 of Article 74 of the Convention,
which establishes that, pending such delimitation, States in a spirit of understanding and co-
operation, shall make every effort to enter into provisional arrangements of a practical nature
and, during this transitional period, not to jeopardize or hamper the reaching of the final
agreement;
Recognising that such provisional arrangements shall be without prejudice to the final
delimitation;
Confirming their intention to act in accordance with generally accepted principles of
international law and the Convention;
Mindful of the legitimate interests of other States and the need to respect the rights and duties of
other States in conformity with generally accepted principles of international law and the
Convention;
Acknowledging the existence of an area of bilateral overlap within the outer limits of their
exclusive economic zones and beyond the outer limits of the exclusive economic zones of other
States;
Desirous of establishing a precise and equitable regime for the orderly and co-operative exercise
of jurisdiction in the area of bilateral overlap of their exclusive economic zones, whilst taking
into account the legitimate interests of other States;
Conscious of the need to agree upon the environmentally responsible management and the
sustainable development of living and non-living natural resources in this area; and
Acting in accordance with the spirit of friendship and solidarity in the Caribbean Community and
the Organization of American States;
Have Agreed as follows:

**Article 1. Co-operation Zone**

1. This Treaty establishes and regulates, in accordance with generally accepted principles of international law and the Convention, a co-operation zone (hereinafter referred to as the Co-operation Zone) for the exercise of joint jurisdiction, control, management, development, and exploration and exploitation of living and non-living natural resources, as well as all other rights and duties established in the Convention, within the area over which a bilateral overlap occurs between their exclusive economic zones and beyond the outer limits of the exclusive economic zones of other States.

2. This Treaty and the Co-operation Zone established thereunder are without prejudice to the eventual delimitation of the Parties' respective maritime zones in accordance with generally accepted principles of international law and the Convention.

3. The Parties agree that nothing contained in the Treaty nor any act done by either Party under the provisions of the Treaty will represent a derogation from or diminution or renunciation of the rights of either Party within the Co-operation Zone or throughout the full breadth of their respective exclusive economic zones.

**Article 2. The Geographical Extent of the Co-operation Zone**

1. The Parties agree that the Co-operation Zone is the area of bilateral overlap between the exclusive economic zones encompassed within each of their outer limits measured to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, and beyond the outer limits of the exclusive economic zones of other States at a distance of 200 nautical miles measured from the baselines from which their territorial sea is measured. For the purposes of this Treaty, the term “exclusive economic zone” and its legal regime shall have the meaning ascribed to them in Part V of the Convention.

2. The precise geographical extent of the Co-operation Zone is defined in Annex I to this Treaty.

3. The Parties contemplate that they may, by agreement at a later date, delimit an international maritime boundary between them.

**Article 3. Exercise of Civil and Administrative Jurisdiction in the Co-operation Zone**

1. The Parties shall exercise joint civil and administrative jurisdiction within and in relation to the Co-operation Zone. In exercising their jurisdiction the Parties shall act at all times in accordance with generally accepted principles of international law and the Convention.

2. The exercise of joint jurisdiction by the Parties in any particular instance shall be evidenced by their agreement in writing, including by way of an exchange of diplomatic notes.

3. For further clarity, the failure of the Parties to reach agreement in writing in relation to the exercise of their joint jurisdiction in the Co-operation Zone in any particular instance means that neither Party can exercise its jurisdiction in that instance.

**Article 4. Rights and Duties of Other States in the Co-operation Zone**
The Parties shall have due regard to the rights and duties of other States in the Co-operation Zone in accordance with generally accepted principles of international law and the Convention, and in particular the provisions of Article 58 of the Convention.

Article 5. Jurisdiction over Living Natural Resources

1. The Parties shall exercise joint jurisdiction over living natural resources within the Co-operation Zone. In exercising their joint jurisdiction, the Parties shall act at all times in accordance with generally accepted principles of international law and the Convention, including the Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

2. In order to exercise environmentally responsible management and to ensure sustainable development in the Co-operation Zone, the exercise of joint jurisdiction over living resources by the Parties in any particular instance shall be governed by a Joint Fisheries Licensing Agreement and evidenced by their agreement in writing, including by way of an exchange of diplomatic notes as provided in Article 3.

3. Within three months of the date on which this Treaty enters into force, the Parties shall in good faith commence the negotiation of a Joint Fisheries Licensing Agreement within the Co-operation Zone.

4. Either Party shall be entitled to enforce the provisions of the Joint Fisheries Licensing Agreement against any persons through the application of its relevant national law. Each Party undertakes to inform the other in writing of such enforcement.

5. For further clarity, the failure of the Parties to reach agreement in writing in relation to the exercise of their joint jurisdiction over living resources in the Co-operation Zone in any particular instance means that neither Party can exercise its jurisdiction in that instance.

6. The Parties shall take steps to co-ordinate between them the management of the living natural resources within the Co-operation Zone subject to their obligations under any relevant agreement to which they are both parties.

Article 6. Jurisdiction over Non-Living Natural Resources

1. The Parties shall exercise joint jurisdiction over non-living natural resources within the Co-operation Zone. In exercising their joint jurisdiction, the Parties shall act at all times in accordance with generally accepted principles of international law and the Convention.

2. The exercise of joint jurisdiction over non-living resources by the Parties in any particular instance shall be managed by a Joint Non-Living Resources Commission and evidenced by their agreement in writing, including by way of an exchange of diplomatic notes as provided in Article 3.

3. The Joint Non-Living Resources Commission shall be established at such time as agreed by the Parties.

4. For further clarity, the failure of the Parties to reach agreement in writing in relation to the exercise of their joint jurisdiction over non-living resources in the Co-operation Zone in any particular instance means that neither Party can exercise its jurisdiction in that instance.

5. Any single geological structure or field of non-living natural resources that lies wholly within the Co-operation Zone shall be shared equally between the Parties.
6. For the purpose of this Article 6, any single geological structure or field of nonliving natural resources that lies in whole or in part across the outer limit of the Co-operation Zone shall be considered to straddle the Co-operation Zone.

7. Any single geological structure or field of non-living natural resources that straddles the outer limit of the Co-operation Zone from the exclusive economic zone of either Party shall be apportioned between them based on unitisation arrangements, as specifically provided by the Joint Non-Living Resources Commission.

8. Marine scientific research, exploration and exploitation or development of nonliving natural resources that lie wholly within the Co-operation Zone shall only take place with the agreement of both Parties as provided in Article 3. If no such agreement is reached, no scientific research, exploration, exploitation or development can take place.

9. Each Party shall provide the other with the results of any scientific research or exploration as soon as possible after the conclusion of any survey.

Article 7. Jurisdiction over Security Matters

1. The Parties acting in good faith shall establish the procedures for the conduct of activities to police the Co-operation Zone.

2. Within three months of the date on which this Treaty enters into force, the Parties shall in good faith commence the negotiation of a security agreement in relation to activities to be undertaken within the Co-operation Zone, which may address among others:
   a. Enforcement of regulations over natural resources;
   b. Terrorism
   c. Prevention of illicit narcotics trafficking;
   d. Trafficking in firearms, ammunition, explosives and other related materials;
   e. Smuggling;
   f. Piracy;
   g. Trafficking in persons and;
   h. Maritime policing and search and rescue.

3. Until a security agreement as contemplated in Article 7 (2) is in force, and unless otherwise provided for in this Treaty, each Party shall unilaterally exercise defence and criminal jurisdiction within and in relation to the Co-operation Zone to the same extent that it may do so within and in relation to that part of its exclusive economic zone that lies outside the Co-operation Zone.

Article 8. Protection of the Marine Environment of the Co-operation Zone

1. The Parties shall, consistent with their international obligations, endeavour to coordinate their activities so as to adopt all measures necessary for the preservation and protection of the marine environment in the Co-operation Zone.

2. The Parties shall provide each other as soon as possible with information about actual or potential threats to the marine environment in the Co-operation Zone.

Article 9. Consultation and Communications
1. Either Party may request consultations with the other Party in relation to any matter arising out of this Treaty or otherwise concerning the Co-operation Zone.
2. The Parties shall designate their respective Ministers of Foreign Affairs to be responsible for all communications required under this Treaty, including under this Article 9, and Articles 3, 5, 6 and 10. Either Party can change its designation upon written notice to the other Party.

**Article 10. Dispute Resolution**

1. Any dispute concerning the interpretation or application of the provisions of this Treaty shall be resolved by direct diplomatic negotiations between the two Parties.
2. If no agreement can be reached within a reasonable period of time, either Party may have recourse to the dispute resolution provisions contemplated under the Convention.
3. Any decision or interim order of any court or tribunal constituted pursuant to Article 10 (2) shall be final and binding on the Parties. The Parties shall carry out in good faith all such orders and decisions.

**Article 11. Registration**

Upon entry into force, this Treaty shall be registered with the Secretary-General of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Secretary-General of the Caribbean Community.

**Article 12. Entry into Force and Duration**

1. This Treaty shall enter into force 30 days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been met.
2. This Treaty shall remain in force until an international maritime boundary delimitation agreement is concluded between the Parties.
3. This Treaty shall be subject to review at the request of either Party.
4. Any amendment to this Treaty shall be by mutual agreement through the exchange of diplomatic notes.

Done at London on December 2nd 2003, in two duplicate copies.

For the State of Barbados:
THE RT. HONOURABLE OWEN S. ARTHUR
Prime Minister

For the Republic of Guyana:
HIS EXCELLENCY BHARRAT JAGDEO
President

ANNEX I. THE GEOGRAPHICAL EXTENT OF THE CO-OPERATION ZONE

1. General Description
The Co-operation Zone is the area of bilateral overlap between the exclusive economic zones of the Parties encompassed within each of their outer limits at a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, and beyond 200 nautical miles measured from the baselines from which the breadth of the territorial sea of any third State is measured.

2. Definition
The area encompassed in the Co-operation Zone is defined as a triangle formed by sections of arc of radius 200 nautical miles, joining the points CZ1, CZ2 and CZ3. CZ1 is the point of intersection of the 200 nautical mile exclusive economic zone limits generated from the Barbados base point B and the Guyana base point G listed in paragraph 3.
CZ2 is the point of intersection of a line every point of which is 200 nautical miles from the nearest point of the baseline from which the breadth of the territorial sea is measured by any third State and the 200 nautical mile exclusive economic zone limit generated from the Guyana base point G.
CZ3 is the point of intersection of a line every point of which is 200 nautical miles from the nearest point of the baseline from which the breadth of the territorial sea is measured by any third State and the 200 nautical mile exclusive economic zone limit generated from the Barbados base point B.

3. Normal Baselines
The outer limits of the exclusive economic zones of Guyana and Barbados, which bound the outer limits of the Co-operation Zone, are measured respectively from:
G: 8° 2’ 54”N 59° 8’ 31”W, being the closest normal baseline point of Guyana, taken from UKHO Chart 517 1992 edition correct to NM 4206/2002; and
B: 13° 5’ 11”N 59° 27’ 35”W, being the closest normal baseline point of Barbados, taken from UKHO Chart 2485, 1987 Edition corrected to NM 516/2002.
The co-ordinates of all points are referred to the World Geodetic Reference System of 1984 (WGS84).

4. Co-ordinate Corrections
The positions of the normal baselines of Barbados taken from UKHO charts are related to WGS84 by fitting chart images to a WGS84 template.
The positions of normal baselines of Guyana taken from UKHO charts are related to WGS84 by means of the Molodensky co-ordinate transformation model recommended in US NIMA TR8350.2, 4 July 1997. The positions of all normal baselines are rounded to the nearest second of arc.

5. Graphic Description
The Co-operation Zone is shown in figures 1 and 2, attached hereto.

Source: <http://untreaty.un.org/unts/144078_158780/7/7/14504.pdf>
Annex 7
### Final outer limit positions defining the continental shelf of Barbados

<table>
<thead>
<tr>
<th>Point Number</th>
<th>Latitude (N)</th>
<th>Longitude (W)</th>
<th>Point origin</th>
<th>Distance to next outer limit point (M)</th>
<th>Outer Limit Area</th>
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<tr>
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<tr>
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<td>FP15</td>
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</table>

Annex 8
Geographical coordinates of the fixed points defining the outer limits of Suriname’s continental shelf beyond 200 nautical miles and the length of the straight line segments connecting them

<table>
<thead>
<tr>
<th>OL Point Numbers</th>
<th>Latitude (N)</th>
<th>Longitude (W)</th>
<th>Article 76 Provision Invoked</th>
<th>Distance To the Next Point (M)</th>
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<td>53°03'27.7128&quot;</td>
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<td>OL-SUR-05</td>
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<td>53°42'28.7868&quot;</td>
<td>76(4)(a)(i)</td>
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<td>OL-SUR-06</td>
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<td>54°14'51.6084&quot;</td>
<td>76(5)</td>
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<td>OL-SUR-07</td>
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<td>54°15'54.6448&quot;</td>
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<td>OL-SUR-08</td>
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Table of Fixed Points, defined by coordinates of longitude and latitude delineating the outer limits of the continental shelf for Trinidad and Tobago

<table>
<thead>
<tr>
<th>Fixed Points</th>
<th>Longitude</th>
<th>Latitude</th>
<th>Article 76 Method</th>
<th>Distance to last FP</th>
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Annex 10
List of coordinates of latitude and longitude of the turning points determined in accordance with paragraph 7 of article 76 which define the outer limit of the continental shelf of the Co-operative Republic of Guyana beyond 200 nautical miles at distance not exceeding 60 nautical miles

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<th>Outer Limit of the continental shelf</th>
<th>Latitude N</th>
<th>Longitude E</th>
<th>Distance nautical miles</th>
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<td>12°03'19.20''</td>
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<td>11°51'26.39''</td>
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No. 8192
VENEZUELA
and
UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
Agreement to resolve the controversy over the frontier
between Venezuela and British Guiana. Signed at
Geneva, on 17 February 1966
Official texts : Spanish and English.
Registered by Venezuela on 5 May 1966.

VENEZUELA
et
ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
Accord tendant à régler le différend relatif à la frontière
entre le Venezuela et la Guyane britannique. Signé à
Genève, le 17 février 1966
Textes officiels espagnol et anglais.
Enregistré par le Venezuela le 5 mai 1966.
1966 Nations Unies — Recueil des Traités 323

No. 8192. AGREEMENT* TO RESOLVE THE CONTROVERSY BETWEEN
VENEZUELA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND
OVER THE FRONTIER BETWEEN VENEZUELA AND
BRITISH GUIANA. SIGNED AT GENEVA, ON 17 FEBRUARY 1966

The Government of the United Kingdom of Great Britain and Northern Ireland, in consultation
with the Government of British Guiana, and the Government of Venezuela;
Taking into account the forthcoming independence of British Guiana;
Recognising that closer cooperation between British Guiana and Venezuela could bring benefit
to both countries;
Convinced that any outstanding controversy between the United Kingdom and British Guiana on
the one hand and Venezuela on the other would prejudice the furtherance of such cooperation
and should therefore be amicably resolved in a manner acceptable to both parties;
In conformity with the agenda that was agreed for the governmental conversations concerning
the controversy between Venezuela and the United Kingdom over the frontier with British
Guiana, in accordance with the joint communiqué of 7 November, 1963, have reached the
following agreement to resolve the present controversy:

* Came into force on 17 February 1966, the date of signature, in accordance with article VII.

Article I
A Mixed Commission shall be established with the task of seeking satisfactory solutions for the practical settlement of the controversy between Venezuela and the United Kingdom which has arisen as the result of the Venezuelan contention that the Arbitral Award of 1899** about the frontier between British Guiana and Venezuela is null and void.

Article II

(1) Within two months of the entry into force of this Agreement, two representatives shall be appointed to the Mixed Commission by the Government of British Guiana and two by the Government of Venezuela.
(2) The Government appointing a representative may at any time replace him, and shall do so immediately should one or both of its representatives be unable to act through illness or death or any other cause.
(3) The Mixed Commission may by agreement between the representatives appoint experts to assist the Mixed Commission, either generally or in relation to any individual matter under consideration by the Mixed Commission.

Article III

The Mixed Commission shall present interim reports at intervals of six months from the date of its first meeting.

Article IV

(1) If, within a period of four years from the date of this Agreement, the Mixed Commission should not have arrived at a full agreement for the solution of the controversy it shall, in its final report, refer to the Government of Guyana and the Government of Venezuela any outstanding questions. Those Governments shall without delay choose one of the means of peaceful settlement provided in Article 33 of the Charter of the United Nations.
(2) If, within three months of receiving the final report, the Government of Guyana and the Government of Venezuela should not have reached agreement regarding the choice of one of the means of settlement provided in Article 33 of the Charter of the United Nations, they shall refer the decision as to the means of settlement to an appropriate international organ upon which they both agree or, failing agreement on this point, to the Secretary-General of the United Nations. If the means so chosen do not lead to a solution of the controversy, the said organ or, as the case may be, the Secretary-General of the United Nations shall choose another of the means stipulated in Article 33 of the Charter of the United Nations, and so on until the controversy has been resolved or until all the means of peaceful settlement there contemplated have been exhausted.

** British and Foreign State Papers, Vol. 92, p. 160 (see also United Kingdom : Treaty Series No. 5 (1897), C. 8439, for text of Treaty of 2 February 1897).

Article V

(1) In order to facilitate the greatest possible measure of cooperation and mutual understanding, nothing contained in this Agreement shall be interpreted as a renunciation or diminution by the
United Kingdom, British Guiana or Venezuela of any basis of claim to territorial sovereignty in the territories of Venezuela or British Guiana, or of any previously asserted rights of or claims to such territorial sovereignty, or as prejudicing their position as regards their recognition or non-recognition of a right of, claim or basis of claim by any of them to such territorial sovereignty.

(2) No acts or activities taking place while this Agreement is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the territories of Venezuela or British Guiana or create any rights of sovereignty in those territories, except in so far as such acts or activities result from any agreement reached by the Mixed Commission and accepted in writing by the Government of Guyana and the Government of Venezuela. No new claim, or enlargement of an existing claim, to territorial sovereignty in those territories shall be asserted while this Agreement is in force, nor shall any claim whatsoever be asserted otherwise than in the Mixed Commission while that Commission is in being.

**Article VI**

The Mixed Commission shall hold its first meeting at a date and place to be agreed between the Governments of British Guiana and Venezuela. This meeting shall take place as soon as possible after its members have been appointed. Thereafter the Mixed Commission shall meet as and when agreed between the representatives.

**Article VII**

This Agreement shall enter into force on the date of its signature.

**Article VIII**

Upon the attainment of independence by British Guiana, the Government of Guyana shall thereafter be a party to this Agreement, in addition to the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Venezuela.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Geneva this 17th day of February, 1966, in the English and Spanish languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:
Michael STEWART

Secretary of State for Foreign Affairs
L. F. S. BURNHAM
Prime Minister of British Guiana

For the Government of Venezuela:
Ignacio IRIBARREN BORGES
Minister for Foreign Affairs

Nº 8192

Source: <http://untreaty.un.org/unts/1_60000/16/31/00031501.pdf>
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<th>Positions</th>
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<th>Jurisdiction to delimit the ECS</th>
<th>Consideration of geological and geomorphological factors (concept of natural prolongation/test of appurtenance)</th>
<th>Consideration of delimitations already made or still to be made in the region</th>
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<td>No (only geography)</td>
<td>No -Partially the 1990 Agreement (Vzla-T&amp;T) -1966 Geneva Agreement -Pending arbitration (Guyana-Suriname) Guinea/Guinea-Bissau: Need to take them into account to produce an “equitable result”</td>
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