

**JOINT DECLARATION
OF JUDGES NELSON, CHANDRASEKHARA RAO AND COT**

The law of maritime delimitation of the EEZ and continental shelf has considerably developed over the past 25 years, thanks to the contribution of international courts and tribunals through their jurisprudence. The provisions of the Convention, articles 74 and 83, are imprecise to say the least. Courts and tribunals have progressively reduced the elements of subjectivity in the process of delimitation in order to further the reliability and predictability of decisions in this matter.

We consider that the International Tribunal for the Law of the Sea should welcome these developments and squarely embrace the methodology of maritime delimitation as it stands today, thus adding its contribution to the consolidation of the case law in this field.

It is not enough to pay lip service to these developments. The Tribunal must firmly uphold the three step approach as it has been formulated over the years.

The choice of a method of delimitation in a particular case must be considered in a strictly objective perspective and based on geographical considerations, in particular the general configuration of the coastline.

Priority is given today to the equidistance/relevant circumstances method. Resort to equidistance as a first step leads to a delimitation that is simple and precise. However complicated the coastline involved is, there is always one and only one equidistance line, whose construction results from geometry and can be produced through graphic and analytical methods. A provisional equidistance line is to be drawn, calculated by reference to adequate base points chosen along the continental coasts of both parties. As the International Court of Justice stated authoritatively in the *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* Judgment, it is only if there are compelling reasons that make this unfeasible on objective geographical or geophysical grounds, such as the instability of the coastline, that one should contemplate another method of delimitation, for instance the angle bisector method.

Considerations of equity come into play only in the second phase of the delimitation, as they necessarily carry an important element of subjectivity. Relevant circumstances may call for an adjustment of the provisional equidistance line so as to ensure an equitable solution. Among the relevant circumstances considered by the case law is the concavity of the coastline with its eventual cut-off effect, of particular importance in the present case. Other relevant circumstances include the relative length of coasts, the presence of islands, considerations relating to economic resources, fisheries, security concerns and navigation.

The test of disproportionality in the third phase ensures that an equitable solution is the result of the delimitation process.

Application of these principles calls for consistency. One should not try to reintroduce other methods of delimitation when implementing the equidistance/relevant circumstances rule. It would amount to reintroducing the very elements of subjectivity progressively reduced over the years.

By reaffirming and respecting these basic principles, the Tribunal will hopefully bring a significant and positive contribution to the development of the law of maritime delimitation in the years to come.

(signed) L. Dolliver M. Nelson
(signed) P. Chandrasekhara Rao
(signed) Jean-Pierre Cot