

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

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PRESIDENT
OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

THE REPORT OF THE TRIBUNAL

AT

THE TWENTY-EIGHTH MEETING OF STATES PARTIES TO THE
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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Mr President,

1. It is an honour for me to address the Meeting of States Parties for the first time in my capacity as President of the Tribunal, in connection with its consideration of the Annual Report of the Tribunal for the year 2017. On behalf of the Tribunal, I would like to congratulate you, Mr President, on your election to the presidency of this Meeting and wish you every success in the completion of your mandate.

Mr President,

Distinguished delegates,

2. The Annual Report of the Tribunal gives an account of the various activities of the Tribunal for the period 1 January to 31 December 2017. I intend to draw your attention to the key aspects of the report and to furnish the Meeting with additional information on more recent developments which have taken place this year.

3. First, as regards organizational matters, I wish to inform you that the seven judges elected at last year's Meeting of States Parties began their terms of office on 1 October 2017. At the last triennial election, in June 2017, the Meeting re-elected Judges José Luis Jesus of Cabo Verde and Boualem Bouguetaia of Algeria and elected Mr Oscar Cabello Sarubbi of Paraguay; Ms Neeru Chadha of India; Mr Kriangsak Kittichaisaree of Thailand; Mr Roman Kolodkin of the Russian Federation; and Ms Liesbeth Lijnzaad of The Netherlands. The five new judges were sworn in in Hamburg on 2 October 2017.

4. On 30 September 2017, my predecessor, Judge Vladimir Golitsyn, completed his three-year term as President of the Tribunal. On 2 October 2017, I was elected President of the Tribunal for a three-year term. On the same day, Judge David Attard of Malta was elected Vice-President of the Tribunal. Judge Albert Hoffmann of South Africa was elected President of the Seabed Disputes Chamber on 4 October 2017. I wish to thank my predecessor, Judge Golitsyn, for his service to the Tribunal and his leadership.

5. Regarding judicial matters, the key development at the Tribunal during the year 2017 was the delivery of the judgment of the Special Chamber of the Tribunal formed to deal with the dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean. The Special Chamber was composed of Judge Boualem Bouguetaia, as President, Judge Rüdiger Wolfrum and myself as judges, and Mr Thomas Mensah and Judge Ronny Abraham, as judges *ad hoc*.

In its Judgment of 23 September 2017, the Special Chamber delimited the maritime boundary between the two Parties in the territorial sea, the exclusive economic zone and the continental shelf, including the continental shelf beyond 200 nautical miles ("nm"). In addition, the Special Chamber dealt with Côte d'Ivoire's claim that the responsibility of Ghana was engaged for alleged violations of the rights of Côte d'Ivoire.

6. In its decision, the Special Chamber first examined Ghana's argument that the Parties had already agreed on the course of their maritime boundary. Ghana contended that a tacit agreement existed on the basis, *inter alia*, of the Parties' "oil practice" for more than five decades.¹ This was opposed by Côte d'Ivoire.² After examining the arguments and facts presented by the Parties, the Special Chamber found that there was no tacit agreement between the Parties to delimit their territorial sea, exclusive economic zone and continental shelf both within and beyond 200 nm.³

7. The Special Chamber emphasized that "oil practice, no matter how consistent it may be, cannot in itself establish the existence of a tacit agreement on a maritime boundary."⁴ It observed that "States often offer and award oil concessions in an area yet to be delimited" and that "[i]t is not unusual for States to align their concession blocks with those of their neighbouring States so that no areas of overlap arise."⁵ The Special Chamber considered that those States "do so ... not least out of caution and prudence to avoid any conflict and to maintain friendly relations with their

¹ Judgment, para. 113.

² Judgment, para. 114.

³ Judgment, para. 228.

⁴ Judgment, para. 215.

⁵ Judgment, para. 225.

neighbours.”⁶ Therefore, it was of the view that “[t]o equate oil concession limits with a maritime boundary would be equivalent to penalizing a State for exercising such caution and prudence.”⁷

8. The Special Chamber also expressed the view that “evidence relating solely to the specific purpose of oil activities in the seabed and subsoil is of limited value in proving the existence of an all-purpose boundary which delimits not only the seabed and subsoil but also superjacent water columns.”⁸

9. Regarding the choice of delimitation methodology, the Special Chamber found “no convincing reason to deviate ... from the equidistance/relevant circumstances methodology”.⁹ While Côte d’Ivoire had argued in favour of the application of the “angle bisector methodology”,¹⁰ the Special Chamber noted that the relevant coasts of the Parties are straight and not unstable, and, therefore, it saw no reason to assume that the identification of base points and the drawing of a provisional equidistance line would be impossible or inappropriate.¹¹

10. After having established the provisional equidistance line, the Special Chamber examined “whether relevant circumstances requiring an adjustment of ... [that] line ... exist”,¹² and came to a negative conclusion.¹³

11. Regarding a possible cut-off resulting from the equidistance line, the Special Chamber held that “some cut-off effect exists to the detriment of Côte d’Ivoire”¹⁴ but that this effect is “not so significant” as to require an adjustment of the line.¹⁵ It held, in particular, that the cut-off affects only a part of the coast of Côte d’Ivoire and

⁶ *Idem.*

⁷ *Idem.*

⁸ Judgment, para. 226.

⁹ Judgment, para. 324.

¹⁰ Judgment, para. 291.

¹¹ Judgment, paras 302 and 318.

¹² Judgment, para. 402.

¹³ Judgment, para. 480.

¹⁴ Judgment, para. 424.

¹⁵ Judgment, para. 425.

comes into being only 163 nautical miles from the starting point of the equidistance line.¹⁶

12. With respect to the argument based on the location of hydrocarbon resources, the Chamber held that the location of such resources could not be considered a relevant circumstance in this case, emphasizing that “[m]aritime delimitation is not a means for distributing justice”¹⁷ and that the pertinent international jurisprudence, “at least in principle, favours maritime delimitation which is based on geographical considerations” and “[on]ly in extreme situations ... may considerations other than geographical ones become relevant.”¹⁸

13. Likewise, as regards the Parties’ “oil practice”, the Special Chamber noted that “international courts and tribunals have been consistent in their reluctance to consider oil concessions and oil activities as relevant circumstances justifying the adjustment of the provisional delimitation line.”¹⁹

14. Regarding the delimitation of the continental shelf beyond 200 nm, the Special Chamber applied the same delimitation methodology as within 200 nm.²⁰ It thus followed the Judgment of the Tribunal in the *Bay of Bengal case*, which is the first decision of an international court or tribunal delimiting the continental shelf beyond 200 nm.

15. The Chamber then applied the proportionality test and verified whether the result achieved on the basis of the delimitation would cause a significant disproportion by reference to the ratio of the lengths of the coastlines of the Parties and the ratio of the relevant maritime area allocated to each Party. It concluded that the delimitation line did “not entail such disproportionality as to create an unequitable result.”²¹

¹⁶ Judgment, para. 424.

¹⁷ Judgment, para. 452.

¹⁸ Judgment, para. 453.

¹⁹ Judgment, para. 476.

²⁰ Judgment, para. 526.

²¹ Judgment, para. 538.

16. After having delimited the maritime boundary between the Parties, the Special Chamber had to deal with Côte d'Ivoire's claim relating to Ghana's international responsibility. Côte d'Ivoire argued that Ghana's conduct in the disputed part of the continental shelf violated Côte d'Ivoire's sovereign rights as well as article 83 of the Convention and the provisional measures prescribed by the Special Chamber in its Order of 25 April 2015.²² The Special Chamber, however, came to the conclusion that none of Ghana's activities in the disputed area engaged its international responsibility.

17. In order to reach this conclusion, the Special Chamber provided some clarification regarding the content of the obligations set out in article 83, paragraph 3, of the Convention. This provision contains two obligations incumbent upon States that are parties to a delimitation dispute, namely the obligation to "make every effort to enter into provisional arrangements of a practical nature" and the obligation "not to jeopardize or hamper the reaching of the final agreement." The Special Chamber pointed out that both obligations are obligations of conduct.²³ Thus, the States concerned are not obliged to reach an agreement on provisional arrangements; however, they are under a duty to act in good faith.²⁴ In this respect, the Special Chamber emphasized the general obligation under article 83, paragraph 3, whereby, in the transitional period, States have to act "in a spirit of understanding and cooperation".²⁵

18. The Judgment represents the Tribunal's significant contribution to maritime delimitation jurisprudence, building on its decision in the *Bay of Bengal* case. The Judgment also adds to an understanding of the obligations set out in article 83, paragraph 3, of the Convention, an issue which has previously been the subject of relatively little judicial commentary by dispute-settlement bodies established under the Convention.

²² Judgment, para. 544.

²³ Judgment, paras. 627 and 629.

²⁴ Judgment, para. 627.

²⁵ Judgment, para. 630.

19. I also wish to highlight that the Judgment of the Special Chamber was well received by both Ghana and Côte d'Ivoire. Immediately after the Special Chamber handed down its Judgment, the Parties' representatives issued a joint communiqué in which they "reiterate[d] the mutual commitment of the two countries to abide by the terms of this decision ... and to fully collaborate for its implementation". The joint communiqué also affirmed the two States' "strong will to work together to strengthen and intensify their brotherly relationships of cooperation and good neighbourliness."²⁶

20. I am pleased to note that, in the joint communiqué, the Parties also commended the Special Chamber for its work, highlighting "the courteous attention with which the proceedings were conducted" and the "efficiency with which the case has been managed, resulting in an expeditious hearing to the mutual benefit of both parties".

21. You may recall that Ghana had initially instituted Annex VII arbitral proceedings against Côte d'Ivoire in relation to the dispute. Subsequently, the Parties agreed that the case should instead be dealt with by a special chamber of the Tribunal. This was not the first time that the parties to a dispute decided, after arbitral proceedings had been instituted, to transfer a case to the Tribunal. It was only the second time, however, that the parties agreed to submit a dispute to a special chamber. The case of *Ghana/Côte d'Ivoire* highlights the flexibility of the Tribunal's procedures and the way in which the Tribunal can meet the needs of parties to a law of the sea dispute.

22. In this regard, I should emphasize that the Statute of the Tribunal allows for considerable involvement of the parties in the selection of the members of the special chamber. While the composition of such chamber is ultimately to be determined by the Tribunal, the Statute explicitly requires that this has to be done "with the approval of the parties."²⁷ Furthermore, the parties have the right to choose

²⁶ The English text of the joint communiqué is available at: <http://www.ghananewsagency.org/economics/ghana-c-te-d-ivoire-agree-to-abide-by-itlos-decision-122647>.

²⁷ Statute, article 15, para. 2.

judges *ad hoc* to serve as members of the special chamber if the Tribunal does not include upon the bench members of their nationality.²⁸

Mr President,

23. There is another case currently pending on the docket of the Tribunal, namely the *M/V "Norstar" case (Panama v. Italy)*. You may recall that this case, which was instituted by application of Panama filed on 17 December 2015, concerns the arrest and detention of the *M/V "Norstar"*, an oil tanker flying the flag of Panama. In respect of this case, the Tribunal delivered its Judgment on the Preliminary Objections raised by Italy on 4 November 2016, finding that it had jurisdiction to adjudicate the dispute and that the application of Panama was admissible. The merits phase of the case then resumed and the Parties submitted written proceedings on the merits during 2017 and 2018. Italy is due to submit its Rejoinder this week, on 13 June 2018. The submission of Italy's Rejoinder will bring the written proceedings in the case to a close and it is expected that public hearings will be held in September this year.

24. During the period under review, the Tribunal also held two sessions devoted to legal and judicial matters as well as organizational and administrative matters. The Annual Report which is before you includes a review of these matters. As usual, the Registrar will address the budgetary matters of the Tribunal in a separate statement.

Mr President,

25. In addition to its judicial activities, the Tribunal undertakes several initiatives to contribute to capacity building in the field of law of the sea and to enhance knowledge of its role in the settlement of disputes involving the law of the sea. I would like to take this opportunity to give you a brief overview of those activities.

26. During the period 2017-2018, for the eleventh time, a nine-month capacity-building and training programme on dispute settlement under the Convention was conducted with the support of the Nippon Foundation. Fellows from Cyprus, the

²⁸ Statute, article 17, paras 2-4.

Democratic Republic of the Congo, Egypt, Indonesia, the Russian Federation, Spain and Trinidad and Tobago participated in the 2017-2018 programme. The selection process for the 2018-2019 programme has now been completed and the new fellows will arrive in Hamburg in July. I wish to express the Tribunal's deep appreciation for the ongoing support given to this programme by the Nippon Foundation.

27. The Tribunal's internship programme, which offers training opportunities to university students, also contributes to capacity building in law of the sea. During 2017, 16 young people from 15 different States served as interns at the Tribunal.

28. The Tribunal also provides support to the International Foundation for the Law of the Sea, which organizes an annual Summer Academy. Last year, 36 participants attended the eleventh session of the Academy, held at the Tribunal's premises from 23 July to 18 August 2017.

29. In order to provide financial assistance to participants from developing countries in the internship programme and the Summer Academy, special trust funds have been established with the support of the Korea Maritime Institute, the China Institute of International Studies and the Government of China. I wish to express our sincere appreciation to these bodies for their contributions to the trust funds.

30. The regional workshops organized by the Tribunal in recent years further enhance capacity building in the law of the sea. On 2 and 3 May this year, a regional workshop on the settlement of disputes related to the law of the sea, the thirteenth so far, took place in Cabo Verde. It was organized in cooperation with the Ministry of Maritime Economy of Cabo Verde with the financial assistance of the Korea Maritime Institute and the China Institute of International Studies. I wish to express my sincere appreciation to the Ministry of Maritime Economy of Cabo Verde, the Korea Maritime Institute and the China Institute of International Studies for their generosity and excellent cooperation. Representatives of nine States from the Central and West African region and of the Sub-Regional Fisheries Commission attended the workshop.

31. The Tribunal is also engaged in public outreach, in order to enhance knowledge of its procedures and its role in international dispute settlement. On 28 March 2018, the Tribunal held a round-table discussion on the Tribunal's procedures concerning the arrest and detention of vessels for members of the legal community. Most recently, on 15 May 2018, the Tribunal opened its doors to the public on the occasion of the “consulates' opening evening”, an event organized by the city of Hamburg.

Mr President,
Distinguished delegates,

32. By way of final remarks, I wish to draw the attention of the Meeting to the current negotiations on an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The first session of the intergovernmental conference is due to take place from 4 to 17 September 2018. Among the many questions to be discussed by the conference is the issue of a mechanism for the settlement of disputes relating to the new instrument. It is possible that the eventual dispute-settlement mechanism could include the option of requesting advisory opinions from the Tribunal on matters arising under the new agreement. Whatever mechanism the parties to the new instrument agree upon, I wish to underline that the Tribunal stands ready to deal with any further tasks with which the States Parties to the Convention wish to entrust it in the future. The Tribunal is well placed for such endeavour; it is one of the main fora for the adjudication of disputes concerning the interpretation and application of the Convention and it has gained more than 20 years' experience in the settlement of disputes under the Convention.

Mr President,
Distinguished delegates,

33. This brings my presentation of the Annual Report of the Tribunal for the year 2017 to a close. I am pleased to say that the Tribunal benefits from excellent cooperation with the United Nations and in this respect, I wish to express our gratitude to the Secretary-General, the Legal Counsel and the Director of the

Division for Ocean Affairs and the Law of the Sea and her staff for their support and cooperation. I thank you all for your kind attention.