

STATEMENT BY

H.E. JUDGE ALBERT J. HOFFMANN

PRESIDENT OF THE  
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

THE ANNUAL REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF  
THE SEA FOR 2022

FOR

THE THIRTY-THIRD MEETING OF THE STATES PARTIES TO THE  
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

12 June 2023

Mr President, distinguished delegates,

1. It is a pleasure for me to address the Meeting of States Parties to present to you the Annual Report of the International Tribunal for the Law of the Sea for the year 2022.
2. On behalf of the Tribunal, I convey to you, Mr President, our congratulations on your election as President of the Meeting of States Parties and wish you every success in the fulfilment of your mandate.
3. The Annual Report of the Tribunal gives an account of the Tribunal's activities for the period from 1 January to 31 December 2022. In my statement, I will refer to certain key aspects of the report, providing the meeting with additional information on more recent developments regarding the work of the Tribunal where relevant.
4. Allow me to first report on the judicial work of the Tribunal, beginning with the *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*. You may recall that this case was submitted to a special chamber of the Tribunal by special agreement concluded on 24 September 2019. In a first phase of the case devoted to the preliminary objections raised by the Maldives, the Special Chamber concluded that it had jurisdiction to adjudicate upon the dispute concerning the delimitation of the maritime boundary between the Parties in the Indian Ocean and that the claim submitted by Mauritius in this regard was admissible. The proceedings on the merits then resumed. On 28 April 2023, the Special Chamber delivered its Judgment on the merits.
5. Let me briefly address some important contributions of this Judgment, which was adopted unanimously by the Special Chamber.
6. The Special Chamber first considered the delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles and found that the appropriate method to be applied in this respect was the equidistance/relevant

circumstances method.<sup>1</sup> Under this method, the first step to be taken is the construction of a provisional equidistance line. In this regard, the key issue that divided the Parties was whether a maritime feature known as Blenheim Reef could be used as the location of base points.<sup>2</sup> The Special Chamber thus examined this issue in two respects, namely with regard to Blenheim Reef's status as a low-tide elevation (or low-tide elevations) and as a drying reef (or drying reefs).<sup>3</sup>

7. I may recall that article 13 of the Convention defines a low-tide elevation to be "a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide." The Special Chamber did not consider that there was a general rule which requires that such a feature be disregarded in selecting base points for the purpose of delimitation.<sup>4</sup> Rather, it held that the "[t]he selection of base points on a low-tide elevation depends on whether it would be appropriate to do so by reference to the geographical circumstances of the given case."<sup>5</sup> At the same time, the Special Chamber noted that international courts and tribunals have rarely placed base points on a low-tide elevation for the construction of the provisional equidistance line,<sup>6</sup> and that it "would be hesitant to place base points on Blenheim Reef unless there is a convincing reason to do so."<sup>7</sup> Having considered the impact Blenheim Reef would have on the provisional equidistance line in the case before it,<sup>8</sup> the Special Chamber found that Blenheim Reef, as a low-tide elevation, was not a site for appropriate base points for the construction of the provisional equidistance line.<sup>9</sup>

8. With regard to the question whether Blenheim Reef could be a site for base points as a drying reef (or drying reefs), I may recall that such features are referred to in article 47, paragraph 1, of the Convention in the context of the drawing of archipelagic baselines by archipelagic States.<sup>10</sup> The Special Chamber noted that

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<sup>1</sup> Judgment, para. 98.

<sup>2</sup> Judgment, para. 116.

<sup>3</sup> Judgment, para. 119.

<sup>4</sup> Judgment, para. 152.

<sup>5</sup> Judgment, para. 152.

<sup>6</sup> Judgment, para. 153.

<sup>7</sup> Ibid.

<sup>8</sup> Judgment, para. 154.

<sup>9</sup> Judgment, para. 155.

<sup>10</sup> Judgment, para. 119.

Mauritius and the Maldives “are two of 22 States which have declared themselves archipelagic States in accordance with article 46 of the Convention”<sup>11</sup> and that, “[a]ccording to article 47, appropriate points for archipelagic baselines can be placed on outermost islands and drying reefs.”<sup>12</sup> However, the Special Chamber found that “there is nothing in article 47 which suggests that such points should also be base points for the construction of the provisional equidistance line”.<sup>13</sup>

9. The Special Chamber also observed that “there is no specific provision in the Convention which governs the delimitation of maritime zones between archipelagic States” and that “[a]rticles 15, 74, and 83 of the Convention govern the delimitation of the territorial sea, the exclusive economic zone and the continental shelf between archipelagic States as between any other States with opposite or adjacent coasts.”<sup>14</sup> In conclusion, the Special Chamber found no reason to “change its previous finding that no base points can be located on Blenheim Reef for the construction of the provisional equidistance line.”<sup>15</sup>

10. A further issue contested between the Parties concerned the question whether the requirements of article 47, paragraph 4, of the Convention applied in drawing Mauritius’ archipelagic baselines at Blenheim Reef.<sup>16</sup> I may add that this paragraph 4 imposes some restrictions on the possibility of drawing archipelagic baselines to and from low-tide elevations.

11. On that issue, the Special Chamber observed that it was “common ground between the Parties that every drying reef is a low-tide elevation” and that the Parties agreed that Blenheim Reef was a drying reef.<sup>17</sup> It considered that there was “thus no question that Mauritius may draw straight archipelagic baselines joining the outermost points of outermost islands and drying reefs of the Chagos Archipelago, including Blenheim Reef.”<sup>18</sup> Furthermore, in the Special Chamber’s view, “because a

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<sup>11</sup> Judgment, para. 178.

<sup>12</sup> Judgment, para. 184.

<sup>13</sup> Judgment, para. 184.

<sup>14</sup> Judgment, para. 189.

<sup>15</sup> Judgment, para. 192.

<sup>16</sup> Judgment, para. 220.

<sup>17</sup> Judgment, para. 221.

<sup>18</sup> Judgment, para. 221.

drying reef is a low-tide elevation, it is plain that article 47, paragraph 4, which applies to low-tide elevations, should apply when archipelagic baselines are drawn joining the outermost points of outermost islands and 'drying reefs'.<sup>19</sup> The Special Chamber thus considered that "the requirements of article 47, paragraph 4, apply in drawing archipelagic baselines in accordance with article 47, paragraph 1, of the Convention."<sup>20</sup>

12. The Special Chamber then constructed a provisional equidistance line from the base points it had selected.<sup>21</sup> Thereafter, it proceeded to determine whether any relevant circumstances existed requiring an adjustment of the provisional equidistance line in order to achieve an equitable solution. In this respect, the Special Chamber found that Blenheim Reef constituted such a relevant circumstance and decided to adjust the provisional equidistance line accordingly.<sup>22</sup>

13. Having completed the delimitation within 200 nautical miles, the Special Chamber turned to the question of the delimitation of the continental shelf beyond 200 nautical miles. It found that its jurisdiction included not only the continental shelf within 200 nautical miles but also any portion of the continental shelf beyond 200 nautical miles.<sup>23</sup> However, having considered three different routes for natural prolongation to the foot of slope point on which Mauritius based its claim of entitlement to the continental shelf beyond 200 nm, the Special Chamber considered that the first route was "impermissible on legal grounds under article 76 of the Convention", and that there was "significant uncertainty as to whether the second and third routes could form a basis for Mauritius' natural prolongation to the critical foot of slope point."<sup>24</sup>

14. The Special Chamber concluded that, given the significant uncertainty, it was not in a position to determine the entitlement of Mauritius to the continental shelf beyond 200 nautical miles in the Northern Chagos Archipelago Region.<sup>25</sup>

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<sup>19</sup> Judgment, para. 222.

<sup>20</sup> Judgment, para. 229.

<sup>21</sup> Judgment, paras. 233-236.

<sup>22</sup> Judgment, para. 237.

<sup>23</sup> Judgment, para. 343.

<sup>24</sup> Judgment, para. 449.

<sup>25</sup> Judgment, para. 450.

Consequently, in the circumstances of the case, the Special Chamber did not proceed to delimit the continental shelf beyond 200 nautical miles between Mauritius and the Maldives.<sup>26</sup>

Mr President, distinguished delegates,

15. I also wish to report that during 2022, two new cases were submitted to the Tribunal, while a third case was submitted in April 2023. First, on 10 November 2022, the Marshall Islands submitted an application, under article 292 of the Convention, against Equatorial Guinea for the prompt release of the *M/T "Heroic Idun"*, a crude carrier flying the flag of the Marshall Islands, and of its 26 crew members. The case was entered into the Tribunal's List of cases as Case No. 30. In accordance with the applicable rules of procedure, the Tribunal treated the application as a matter of urgency and fixed the date for the opening of the public hearing. However, four days after the application was received, the agent of the Marshall Islands informed the Tribunal of recent developments concerning the *M/T "Heroic Idun"* and its crew, stating that "Equatorial Guinea caused the Vessel and her crew to be transferred into the jurisdiction, control and custody of Nigeria on 11 November 2022." The agent further stated that "[t]hese developments have regrettably rendered moot the Marshall Islands' Prompt Release Application" and that "[a]s a result, the Marshall Islands is compelled to discontinue the proceedings." As President of the Tribunal, I subsequently issued an order placing on record the discontinuance of the proceedings and ordering the removal of the case from the List of cases.

16. Subsequently, the Marshall Islands instituted arbitral proceedings under Annex VII of the Convention against Equatorial Guinea in the dispute concerning the *M/T "Heroic Idun"* and her crew. On 18 April 2023, in accordance with article 3(e) of Annex VII of the Convention, I held consultations with the Parties at the Tribunal in Hamburg to discuss the composition of the arbitral tribunal. On that occasion, the Marshall Islands and Equatorial Guinea agreed to transfer the arbitral proceedings instituted under Annex VII of the Convention to a special chamber of the Tribunal to

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<sup>26</sup> Judgment, para. 451.

be constituted pursuant to article 15, paragraph 2, of the Statute of the Tribunal. By Order of 27 April 2023, a special chamber of the Tribunal composed of five members was formed to deal with “the dispute concerning the M/T “Heroic Idun” and her crew” between the two States. This case has been entered into the Tribunal’s List of cases as Case No. 32.

17. As in the *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean*, the decision of the parties in *The M/T “Heroic Idun” (No. 2) Case* to transfer proceedings instituted under Annex VII of the Convention to a special chamber of the Tribunal highlights the flexibility of the Tribunal’s procedures and the Tribunal’s ability to meet the needs of parties to a law of the sea dispute.

18. Another significant development regarding the judicial work of the Tribunal in 2022 was the submission of a request for an advisory opinion by the Commission of Small Island States on Climate Change and International Law, which I will refer to as “the Commission”. On 26 August 2022, the Commission decided to request an advisory opinion from the Tribunal on two questions:

What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea [...], including under Part XII:

(a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?

[and]

(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?

19. The request for an advisory opinion was filed with the Registry on 12 December 2022 and entered into the List of cases as Case No. 31. On 16 December 2022, as President of the Tribunal, I issued an order on the conduct of

proceedings in the case and fixed 16 May 2023 as the time-limit within which States Parties to the Convention, the Commission and other intergovernmental organizations listed in the annex to the order may present written statements on the questions submitted to the Tribunal for an advisory opinion. This time-limit was later extended to 16 June 2023. It is anticipated that oral proceedings will be held later this year.

20. In addition to providing information on judicial work, the Annual Report which is before you also includes a review of organizational and administrative issues addressed by the Tribunal during its two sessions held in 2022. The Registrar will address certain budgetary matters of the Tribunal in a separate statement.

21. In this context, I wish to report on the completion of works undertaken by the Government of Germany at the premises of the Tribunal. The replacement of the audiovisual equipment in both the deliberations room and the main courtroom has now been completed, and the interim courtroom has been dismantled. The modernized courtroom, which is now equipped with LED video walls, was used by the Special Chamber for the reading of the Judgment in the *Mauritius/Maldives* case in April 2023 and is available for all future hearings of the Tribunal and its chambers. I wish to express my gratitude to the Government of Germany for undertaking this work and for ensuring that the Tribunal is equipped with the most modern technology in order to conduct proceedings as efficiently as possible.

22. Apart from its judicial and administrative work, the Tribunal is also active in the field of capacity-building in the law of the sea and seeks to increase awareness of the Tribunal's role in the settlement of disputes. As in previous years, I would like to take this opportunity to update you on these capacity-building activities.

23. The Tribunal regularly organizes regional workshops that enhance capacity-building in the law of the sea. The sixteenth such regional workshop was held earlier this month in Nice, France, and was attended by representatives of nine States from the region and the European Union. The workshop, which was co-organized with the Institute for Peace and Development at Côte d'Azur University, was made possible with the financial assistance of the Republic of Cyprus, France and the Korea



Maritime Institute. I wish to express my sincere appreciation to them for their generous support and to the Institute for Peace and Development for its excellent cooperation in the organization of the workshop.

24. During the period 2022-2023, the sixteenth edition of 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 Bangladesh, Guinea-Bissau, India, Nigeria, Panama and Ukraine took part in the programme. I am pleased to inform you that the selection of candidates for the seventeenth edition of the programme has recently been concluded. I wish to express the Tribunal's deep appreciation to the Nippon Foundation for its ongoing support to this programme.

25. In addition, the Tribunal's internship programme offers training opportunities to recent graduates and young government officials. During a three-month internship, interns are exposed to the work of the Tribunal, assisting the Registry with its functions as well as preparing research papers in relevant fields. In 2022, 15 participants from 14 different States served as interns at the Tribunal.

26. The Tribunal also provides support to the International Foundation for the Law of the Sea, which organizes an annual Summer Academy. As in 2022, a full in-person Summer Academy is due to take place at the premises of the Tribunal in August this year.

27. 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 and the Government of China. I wish to express our sincere appreciation to these donors for their contributions to the trust funds.

28. I am also happy to report that a new capacity-building programme in the form of a workshop for legal advisers took place in September 2022 at the seat of the Tribunal in Hamburg. The purpose of the workshop, funded by the Republic of Korea, is to familiarize legal advisers, in particular from developing countries, with

the Convention's dispute-settlement mechanisms and provide insight into the procedure and practice of the Tribunal. Representatives of 18 States from the Asia-Pacific region participated in the week-long workshop in 2022. Thanks to the generous support of the Republic of Korea, the next workshop for legal advisers will be held at the Tribunal this July. Legal advisers of States from the Southern African region have been invited to this year's workshop.

29. Finally, I wish to note that in September 2021, the Tribunal established a Junior Professional Officer programme for young professionals to serve in the Legal Office of the Tribunal's Registry, or in other departments of the Registry, as necessary. On 1 December 2022, a memorandum of understanding regarding this programme was signed by the Tribunal and the Government of China.

Mr President,  
Distinguished delegates,

30. I now wish to remark briefly on two significant developments relevant to the work of the Tribunal. First, as I noted earlier, and as set out in the Annual Report, there is the Request for an Advisory Opinion by the Commission of Small Island States on Climate Change and International Law regarding States Parties' obligations under the Convention in relation to climate change, which is currently pending before the Tribunal.

31. Second, as you are all well aware, on 4 March 2023, States reached agreement on the text of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, or BBNJ. I note that the new agreement provides that the conference of the parties may decide to request the Tribunal to give an advisory opinion on a legal question regarding the conformity with the BBNJ Agreement of a proposal before the conference of the parties on any matter within its competence. The inclusion of such a provision in the new agreement reflects the potential usefulness of advisory opinions when dealing with complex ocean governance issues.

32. This brings my presentation of the Annual Report of the Tribunal for the year 2022 to a close. As always, the Tribunal stands ready to assist States in whatever way possible in the fulfilment of its mandate to settle disputes concerning the interpretation or application of the Convention.

33. 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 his staff for their support and cooperation during what has been an exceptionally busy year for them. I thank you all for your kind attention.