

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

H.E. JUDGE ALBERT HOFFMANN

PRESIDENT
OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

THE ANNUAL REPORT OF THE TRIBUNAL FOR 2020

AT

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

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Mr President,
Distinguished delegates,

1. It is an honour for me to address the Meeting of States Parties and to present the Annual Report of the International Tribunal for the Law of the Sea for the year 2020. On behalf of the Tribunal, I wish to congratulate you, Mr President, on your election to the presidency of this Meeting and wish you every success in the fulfilment of your mandate.

2. As I am prevented from attending the Meeting in person owing to the COVID-19 pandemic, I have prepared this statement which I am presenting to you via video link, from the premises of the Tribunal in Hamburg.

3. The Annual Report of the Tribunal gives an account of the various activities of the Tribunal for the period 1 January to 31 December 2020. It is my intention to highlight the main aspects of the report and to furnish the Meeting with further information on more recent developments which have taken place over the course of the past months.

4. I will first address some key recent developments that have taken place with respect to the Tribunal's judicial work, starting with the *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*. As you may recall, the case was submitted to a special chamber of the Tribunal by notification of a special agreement concluded between the Parties on 24 September 2019.

5. On 18 December 2019, the Maldives filed with the Special Chamber preliminary objections to the jurisdiction of the Special Chamber and to the admissibility of Mauritius' claims. The proceedings on the merits were suspended upon receipt of the preliminary objections by the Registry. Within the time-limits fixed by Order of the President of the Special Chamber of 19 December 2019, Mauritius filed written observations on the preliminary objections on 17 February 2020 and the Maldives filed written observations in reply on 17 April 2020. The hearing on the preliminary objections was held from 13 to 19 October 2020 in hybrid format,

combining physical and virtual participation of members of the Special Chamber and representatives of the Parties. On 28 January 2021, the Special Chamber delivered its Judgment on the Preliminary Objections raised by the Maldives. The deliberations in the case and reading of the Judgment took place in hybrid format.

6. The Maldives presented five preliminary objections. As its first preliminary objection, the Maldives contended that the United Kingdom was an indispensable third party to the proceedings, and, as the United Kingdom was not a party to those proceedings, the Special Chamber did not have jurisdiction over the alleged dispute. In its second preliminary objection, the Maldives submitted that the Special Chamber had no jurisdiction to determine the disputed issue of sovereignty over the Chagos Archipelago, which it would necessarily have to do if it were to determine Mauritius' claims in these proceedings. In its Judgment, the Special Chamber considered it appropriate "to examine the two objections together insofar as the legal status of the Chagos Archipelago is concerned."¹

7. In its examination of the legal status of the Chagos Archipelago, the Special Chamber considered in particular whether the following had any relevance or implication: the award of 18 March 2015 in the Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom; the advisory opinion of the International Court of Justice ["ICJ"] of 25 February 2019 on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965; and resolution 73/295 of the United Nations General Assembly of 22 May 2019 entitled "Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965".

8. In the view of the Special Chamber, the arbitral award "demonstrates that, aside from the question of sovereignty, the Chagos Archipelago has been subject to a special regime, according to which Mauritius is entitled to certain maritime rights".² As to the Chagos advisory opinion, the Special Chamber found that "[t]he determinations made by the ICJ with respect to the issues of the decolonization of

¹ Judgment, para. 100.

² Judgment, para. 246.

Mauritius in the *Chagos* advisory opinion have legal effect and clear implications for the legal status of the Chagos Archipelago” and that “[t]he United Kingdom’s continued claim to sovereignty over the Chagos Archipelago is contrary to those determinations.”³ The Special Chamber also found that, “[w]hile the process of decolonization has yet to be completed, Mauritius’ sovereignty over the Chagos Archipelago can be inferred from the ICJ’s determinations”.⁴

9. With respect to UNGA resolution 73/295, the Special Chamber noted that this resolution demanded that the United Kingdom withdraw its administration over the Chagos Archipelago within six months from its adoption. In the view of the Special Chamber, “[t]he fact that the time-limit set by the General Assembly has passed without the United Kingdom complying with this demand further strengthens the Special Chamber’s finding that its claim to sovereignty over the Chagos Archipelago is contrary to the authoritative determinations made in the advisory opinion.”⁵

10. Having examined the legal status of the Chagos Archipelago, the Special Chamber reached its conclusions as regards the first and second preliminary objections raised by the Maldives. With respect to the first objection, the Special Chamber considered that, “whatever interests the United Kingdom may still have with respect to the Chagos Archipelago, they would not render the United Kingdom a State with sufficient legal interests, let alone an indispensable third party, that would be affected by the delimitation of the maritime boundary around the Chagos Archipelago.”⁶ Accordingly, the first preliminary objection of the Maldives was rejected.

11. Regarding the second objection, the Special Chamber considered that its “findings as a whole provide it with sufficient basis to conclude that Mauritius can be regarded as the coastal State in respect of the Chagos Archipelago for the purpose of the delimitation of a maritime boundary even before the process of the

³ Judgment, para. 246.

⁴ Judgment, para. 246.

⁵ Judgment, para. 246.

⁶ Judgment, para. 247.

decolonization of Mauritius is completed.”⁷ The second preliminary objection was thus also rejected.

12. In its third preliminary objection, the Maldives contended that, as Mauritius and the Maldives had not engaged, and could not meaningfully engage, in the negotiations required by articles 74 and 83 of the Convention, the Special Chamber lacked jurisdiction. In its Judgment, the Special Chamber noted that “Mauritius, on several occasions, attempted to engage the Maldives in negotiations concerning the delimitation of their claimed overlapping exclusive economic zones and continental shelves”,⁸ while the Maldives, “for most of the time, refused to negotiate with Mauritius”.⁹ The Special Chamber concluded that “the obligation under article 74, paragraph 1, and article 83, paragraph 1, of the Convention has been fulfilled”,¹⁰ and, accordingly, rejected the third preliminary objection of the Maldives.

13. The Special Chamber also rejected the Maldives’ fourth preliminary objection, according to which there was no, and could not be, such a dispute between Mauritius and the Maldives, having found that “a dispute existed between the Parties concerning the delimitation of their maritime boundary”¹¹ at the time of filing of the Notification. In its fifth preliminary objection, the Maldives submitted that Mauritius’ claims constituted an abuse of process and were therefore inadmissible. This objection was also rejected by the Special Chamber.

14. On the basis of the above, 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 [wa]s admissible.”¹² The Special Chamber found it appropriate to defer to the proceedings on the merits “questions regarding the extent to which the Special Chamber may exercise its jurisdiction [over the above dispute], including questions arising under article 76 of the Convention.”¹³ Regarding

⁷ Judgment, para. 250.

⁸ Judgment, para. 288.

⁹ Judgment, para. 289.

¹⁰ Judgment, para. 293.

¹¹ Judgment, para. 335.

¹² Judgment, para. 351.

¹³ Judgment, para. 354 (6).

the Parties' views in relation to Mauritius' claim concerning the obligations under article 74, paragraph 3, and article 83, paragraph 3, of the Convention, the Special Chamber found it "appropriate to reserve this matter for consideration and decision in the proceedings on the merits, as this point ha[d] not yet been fully argued by the Parties."¹⁴

15. By Order dated 3 February 2021, the President of the Special Chamber fixed 25 May 2021 and 25 November 2021 as the time-limits for the filing of a Memorial by Mauritius and a Counter-Memorial by the Maldives, respectively. Mauritius filed the Memorial within the prescribed time-limit.

16. I would now like to briefly report on the most recent developments in another case currently on the docket of the Tribunal, *The M/T "San Padre Pio" (No. 2) Case (Switzerland/Nigeria)*. The case relates to the dispute between Switzerland and Nigeria concerning the arrest and detention of the *M/T "San Padre Pio"*, its crew and cargo. The case was submitted to the Tribunal by notification of a special agreement concluded between the Parties on 17 December 2019.

17. By Order dated 7 January 2020, the President of the Tribunal fixed 6 July 2020 and 6 January 2021 as the time-limits for the filing of a Memorial by Switzerland and a Counter-Memorial by Nigeria, respectively. Switzerland filed the Memorial within the time-limit. By Order of 5 January 2021, the time-limit for the submission of the Counter-Memorial of Nigeria was extended to 6 April 2021. No Counter-Memorial was filed by Nigeria within the extended time-limit. By Order of 18 June 2021, having ascertained the views of the Parties, 9 September 2021 was fixed as the date for the opening of the hearing.

Mr President,

18. At this juncture, I wish to make a few remarks regarding organizational matters. In March 2021, as it did in September 2020, the Tribunal successfully held its administrative session in hybrid format, with some judges present in Hamburg and

¹⁴ Judgment, para. 353.

those unable to travel to Hamburg participating via video link from their homes. In this regard, I wish to recall that on 25 September 2020, the Tribunal amended its Rules in order to provide that the Tribunal may decide, as an exceptional measure, for public health, security or other compelling reasons, to hold hearings, meetings and readings of judgments entirely or in part by video link. Operating within this framework, the Tribunal has managed to ensure the continuity of its mandate while protecting the health of its judges and staff as well as of the representatives of the parties.

19. In this context, the importance of modern technology to the efficient functioning of international courts and tribunals needs to be underscored. In this regard, I wish to inform you that plans have been set in motion to fully upgrade the audio-visual equipment in the courtroom and the deliberations room. In order to ensure that the Tribunal can continue to exercise its judicial function, an interim courtroom has been installed that will remain available until the technical works have been completed in 2022. I take this opportunity to express our gratitude to the German Government for its continued support in modernizing the Tribunal's facilities.

20. The use of gender-inclusive language, or language which does not employ any gender stereotypes, is a widespread preoccupation of organizations within the United Nations system. Sharing this concern, the Tribunal decided, on 25 March 2021, to amend its Rules with a view to rendering them gender inclusive. Accordingly, amendments were made to both the English and the French text of the Rules of the Tribunal.

21. Beyond its judicial and administrative work, the Tribunal conducts various activities with a view to furthering capacity building in the law of the sea and of expanding knowledge of the Tribunal's role in the resolution of disputes. I would like to take this opportunity to update you on these activities. As I noted last year, some of these activities continue to be affected by the COVID-19 pandemic, but I can assure you that the Tribunal remains committed to providing capacity building in the future through whatever means possible.

22. During the period 2020-2021, for the fourteenth time, a nine-month capacity-building and training programme on dispute settlement under the Convention was conducted with the support of the Nippon Foundation. The programme is designed to provide junior to mid-level government officials and researchers with advanced legal training in international dispute settlement. Fellows from Azerbaijan, Belgium, Dominican Republic, Kenya, Malaysia, Mexico and Sierra Leone took part. Owing to the COVID-19 pandemic, some changes were made to the timetable and structure of the 2020-2021 programme. It was also decided to organize the programme in hybrid format, combining the physical and virtual participation of fellows and lecturers. It gives me great satisfaction to inform you that preparations for the 2021-2022 programme are well underway and we hope to welcome the successful candidates in early August. I wish to express the Tribunal's deep appreciation for the ongoing support given to this programme by the Nippon Foundation.

23. In addition, the Tribunal's internship programme offers training opportunities to university students and recent graduates. During a three-month period, interns are exposed to the work of the Tribunal, assisting the Registry with its functions, as well as preparing research papers in relevant fields. Despite the outbreak of the COVID-19 pandemic, the Tribunal has endeavoured to keep the programme running as normal and in person, albeit in a slightly reduced form. It has also offered interns the chance to postpone their internship if necessary. In 2020, 12 persons from 12 different States served as interns at the Tribunal.

24. The Tribunal also provides support to the International Foundation for the Law of the Sea, which organizes an annual Summer Academy. A number of judges lecture on various law of the sea topics covered by this programme. As you may recall, owing to COVID-19-related restrictions, the Summer Academy did not take place in 2020. Unfortunately, the Summer Academy will not be held in 2021 either. Nonetheless, a one-week online course on the law of the sea and maritime law will be hosted by the Foundation in August of this year.

25. 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 benefactors for their contributions to the trust funds.

26. A new capacity-building programme is planned for 2021, in the form of a workshop for legal advisers, funded by the Republic of Korea. Its purpose 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. The one-week workshop will be held at the seat of the Tribunal and is scheduled for November this year if circumstances permit.

Mr President,

27. I have the distinct pleasure of addressing you all at a time when the Tribunal is on the cusp of reaching a major milestone: its twenty-fifth anniversary. It was on 18 October 1996 that the first bench of judges took their oath of office and signed solemn declarations in the presence of high dignitaries including the Secretary-General of the United Nations, the German Federal Minister of Foreign Affairs, and the Secretary-General of the Authority. In light of the preference for an in-person event to be held in the refurbished courtroom and the likelihood that measures to prevent the spread of COVID-19 would still be in place in autumn 2021, the Tribunal is exploring the possibility of hosting a symposium at its premises in autumn 2022.

28. This year, on 1 October, a small commemorative event is planned at the premises of the Tribunal in the presence of the judges attending the Tribunal's administrative session, the First Mayor of the City of Hamburg and members of the Consular Corps. As part of the twenty-fifth anniversary celebrations, I am also pleased to announce that new editions of the *Digest of Jurisprudence of the International Tribunal for the Law of the Sea*, the *Guide to Proceedings before the International Tribunal for the Law of the Sea* and the ITLOS film are currently being finalized by the Registry.

29. As I look back at the first twenty-five years of the Tribunal, I believe that its achievements place it in good stead to carry on its mandate into the 21st century as a central forum for the peaceful settlement of law of the sea disputes. In this regard, I

wish to mention the important work of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction, commonly referred to as BBNJ. Although the process is still ongoing, a draft text of the future BBNJ agreement has been made available on the United Nations website. I note that the draft text, in its current form, incorporates a provision which makes Part XV of the Convention applicable *mutatis mutandis* to disputes concerning the interpretation or application of the BBNJ Agreement. As a seasoned adjudicatory body with ample experience in dealing with issues concerning the marine environment, the Tribunal is particularly well-suited to pronounce on legal matters that could arise from the future instrument.

Mr President,
Distinguished delegates,

30. This brings me to the end of my statement. Before I conclude, I would like to seize this opportunity to congratulate the new director of the Division for Ocean Affairs and the Law of the Sea, Mr Vladimir Jares, on his recent appointment. I am sure that, under his leadership, the excellent relationship existing between the Tribunal and DOALOS will continue. Allow me also to express our gratitude to the Secretary-General, the Legal Counsel and the Director of DOALOS and his staff for their support and cooperation and for enabling the Meeting to perform its important functions despite the challenging times we continue to face.

Thank you all for your kind attention.