

## DECLARATION OF JUDGE BHANDARI

*Notion of a “single continental shelf” — Statement by the Court concerning single continental shelf — Unnecessary to include statement.*

1. I agree with the Court’s Judgment and its reasoning. In particular, I agree with the Court’s conclusion that

“under customary international law, a State’s entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may not extend within 200 nautical miles from the baselines of another State” (Judgment, para. 79).

2. This conclusion follows, in my view, from the considerations relevant to the régime of the exclusive economic zone and the considerations relevant to the régime of the continental shelf, and the relationship between those respective régimes, as set out in the Court’s Judgment.

3. When addressing the régime of the continental shelf,

“[t]he Court notes that, in contemporary customary international law, there is a single continental shelf in the sense that the substantive rights of a coastal State over its continental shelf are generally the same within and beyond 200 nautical miles from its baselines” (Judgment, para. 75).

4. This notion can be traced to a statement in the 11 April 2006 award in *Barbados v. Trinidad and Tobago*. There, the arbitral tribunal, constituted in accordance with Annex VII of the United Nations Convention on the Law of the Sea, stated that “in any event there is in law only a single ‘continental shelf’ rather than an inner continental shelf and a separate extended or outer continental shelf” (*Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them, Award of 11 April 2006*, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXVII, pp. 208-209, para. 213). The International Tribunal for the Law of the Sea (ITLOS) in its 2012 Judgment in the maritime boundary delimitation case between Bangladesh and Myanmar made a statement to the same effect, noting that “Article 76 of the Convention embodies the concept of a single continental shelf” (*Delimitation of the Maritime Boundary in the Bay of*

*Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 96, para. 361; see also *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire), Judgment, ITLOS Reports 2017*, p. 136, para. 490).

5. Including the statement in paragraph 75 quoted above — particularly with the words “generally the same” — in the present Judgment was not, in my view, necessary. On the contrary, the implications of the notion of a “single” continental shelf in this sense have been a source of disagreement and confusion in these proceedings (see e.g. CR 2022/25, p. 38, para. 54 (Lowe); CR 2022/26, p. 28, paras. 25-27 (Wood)). Moreover, it is not entirely clear, without further specification of potential differences, what it means to say that the substantive rights of a coastal State are “generally the same” within and beyond 200 nautical miles. The use of the word “generally” in this connection could potentially be read as diluting the notion of a “single continental shelf”. Although seemingly innocuous, the word might thus even generate uncertainty for coastal States in future cases.

6. It would have been possible for paragraph 75 of the Judgment simply to begin with the sentence: “The basis for the entitlement to a continental shelf is different within or beyond 200 nautical miles.” The bases of entitlement within and beyond 200 nautical miles are the relevant points the Court needed to address in this passage. Introducing this paragraph with a statement that repeats the concept of a “single” continental shelf, together with the use of the word “generally”, as quoted above, risks perpetuating uncertainty about the practical consequences of this notion.

(Signed) Dalveer BHANDARI.

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