



Division for Ocean Affairs and the Law of the Sea  
Office of Legal Affairs

# Law *of the Sea*



*Bulletin No. 91*

United Nations  
New York, 2017

## NOTE

e designations employed and the presentation of the material in this publication do not imply the ex-

# CONTENTS

	<i>Page</i>
I. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA	
Status of the United Nations Convention on the Law of the Sea, of the Agreement relating to the Implementation of Part XI of the Convention and of the Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks	
1. Table recapitulating the status of the Convention and of the related Agreements, as at 31 July 2016	1
2. Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements, as at 31 July 2016	
(a) the Convention .....	10
(b) Agreement relating to the Implementation of Part XI of the Convention .....	12
(c) Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks .....	14
II. LEGAL INFORMATION RELEVANT TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA	
National legislation	
Marshall Islands: Republic of the Marshall Islands Maritime Zones Declaration Act 2016 .....	15
III. COMMUNICATION BY STATES	
Iran (Islamic Republic of): Note verbale from the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General of the United Nations, 21 April 2016 ..	22
IV. OTHER INFORMATION RELEVANT TO THE LAW OF THE SEA	
A.	



I.

1

State or entity	United Nations Convention on the Law of the Sea (in force as from 16/11/1994)			Agreement relating to the implementation of Part XI of the Convention (in force as from 28/07/1996)		Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (in force as from 11/12/2001)		
	Signature dd/mm/yy	Ratification/ accession; dd/mm/yy	Declaration	Signature dd/mm/yy	Ratification/ accession; dd/mm/yy	Signature dd/mm/yy	Ratification/ accession; dd/mm/yy	Declaration
<i>Andorra</i>								
Angola	10/12/82	05/12/90			07/09/10(a)			
Antigua and Barbuda	07/02/83	02/02/8 (a27 -97 Tw )Tw	6.90(03/05/16(a)-4	<002 T3J	0.002 T3	-0.002	3Tc	

Cabo Verde	10/12/82	10/08/87	29/07/94	23/04/08		
Cambodia	01/07/83					
Cameroon	10/12/82	19/11/85	24/05/95	28/08/02		
Canada	10/12/82	07/11/03	29/07/94	07/11/03	04/12/95	03/08/99
Central African Republic	04/12/84					
Chad	10/12/82	14/08/09		14/08/09(p)		
Chile	10/12/82	25/08/97		25/08/97(a)		11/02/16(a)
China	10/12/82	07/06/96	29/07/94	07/06/96(p)	06/11/96	
Colombia	10/12/82					
Comoros	06/12/84	21/06/94				
Congo	10/12/82	09/07/08		09/07/08(p)		
Cook Islands	10/12/82	15/02/95		15/02/95(a)		01/04/99(a)
Costa Rica	10/12/82	21/09/92		20/09/01(a)		18/06/01(a)
Côte d'Ivoire	10/12/82	26/03/84	25/11/94	28/07/95(sp)	24/01/96	
Croatia		05/04/95(s)		05/04/95(p)		10/09/13(a)
Cuba	10/12/82	15/08/84		17/10/02(a)		
Cyprus	10/12/82	12/12/88	01/11/94	27/07/95		25/09/02(a)
Czech Republic	22/02/93	21/06/96	16/11/94	21/06/96		19/03/07(a)
Democratic People's Republic of Korea	10/12/82					
Democratic Republic of the Congo	22/08/83	17/02/89				
Denmark	10/12/82	16/11/04	29/07/94	24/07/97	16/11/04	27/06/96 19/12/03
Djibouti	10/12/82	08/10/91				
Dominica	28/03/83	24/10/91				
Dominican Republic	10/12/82	10/07/09		10/07/09(p)		
Ecuador	10/12/82	26/08/83				
				21/07/97(p)		



[Redacted text line]

[Redacted text line]

[Redacted text line]







---

United Nations Convention on  
the Law of the Sea  
(in force as from 16/11/1994)

Agreement relating to the  
implementation of Part XI  
of the Convention  
(in force as from 28/07/1996)

---

State or entity

---

[Redacted]

[Redacted]

[Redacted]

[Redacted]

8

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

---

United Arab Emirates	10/12/82					
United Kingdom of Great Britain and Northern Ireland		25/07/97(a)	29/07/94	25/07/97	04/12/95	10/12/01 19/12/03
United Republic of Tanzania	10/12/82	30/09/85	07/10/94	25/06/98		
United States of America			29/07/94		04/12/95	21/08/96
Uruguay	10/12/82	10/12/92	29/07/94	07/08/07	16/01/96	10/09/99
Uzbekistan						
Vanuatu	10/12/82	10/08/99	29/07/94	10/08/99(p)	23/07/96	
Venezuela (Bolivarian Republic of)						
Viet Nam	10/12/82	25/07/94		27/04/06(a)		
Yemen	10/12/82	21/07/87		13/10/14(a)		
Zambia	10/12/82	07/03/83	13/10/94	28/07/95(sp)		
Zimbabwe	10/12/82	24/02/93	28/10/94	28/07/95(sp)		
TOTALS	157	168	79	149	59	83

<sup>4</sup> For further details, see Chapter XXI, section 7, of the publication entitled *Multilateral Treaties Deposited with the Secretary-General*, available from [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXI-7&chapter=21&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-7&chapter=21&clang=_en).



83. Nauru (23 January 1996)
84. Republic of Korea (29 January 1996)
85. Monaco (20 March 1996)
86. Georgia (21 March 1996)
87. France (11 April 1996)
88. Saudi Arabia (24 April 1996)
89. Slovakia (8 May 1996)
90. Bulgaria (15 May 1996)
91. Myanmar (21 May 1996)
92. China (7 June 1996)
93. Algeria (11 June 1996)
94. Japan (20 June 1996)
95. Czech Republic (21 June 1996)
96. Finland (21 June 1996)
97. Ireland (21 June 1996)
98. Norway (24 June 1996)
99. Sweden (25 June 1996)
100. Netherlands (28 June 1996)
101. Panama (1 July 1996)
102. Mauritania (17 July 1996)
103. New Zealand (19 July 1996)
104. Haiti (31 July 1996)
105. Mongolia (13 August 1996)
106. Palau (30 September 1996)
107. Malaysia (14 October 1996)
108. Brunei Darussalam (5 November 1996)
109. Romania (17 December 1996)
110. Papua New Guinea (14 January 1997)
111. Spain (15 January 1997)
112. Guatemala (11 February 1997)
113. Pakistan (26 February 1997)
114. Russian Federation (12 March 1997)
115. Mozambique (13 March 1997)
116. Solomon Islands (23 June 1997)
117. Equatorial Guinea (21 July 1997)
118. United Kingdom of Great Britain and Northern Ireland (25 July 1997)
119. Chile (25 August 1997)
120. Benin (16 October 1997)
121. Portugal (3 November 1997)
122. South Africa (23 December 1997)
123. Gabon (11 March 1998)
124. European Union (1 April 1998)
125. Lao People's Democratic Republic (5 June 1998)
126. Suriname (9 July 1998)
127. Nepal (2 November 1998)
128. Belgium (13 November 1998)
129. Poland (13 November 1998)
130. Ukraine (26 July 1999)
131. Vanuatu (10 August 1999)
132. Nicaragua (3 May 2000)
133. Maldives (7 September 2000)
134. Luxembourg (5 October 2000)
135. Serbia (12 March 2001)
136. Bangladesh (27 July 2001)
137. Madagascar (22 August 2001)
138. Hungary (5 February 2002)
139. Armenia (9 December 2002)
140. Qatar (9 December 2002)
141. Tuvalu (9 December 2002)
142. Kiribati (24 February 2003)
143. Albania (23 June 2003)
144. Canada (7 November 2003)
145. Lithuania (12 November 2003)
146. Denmark (16 November 2004)
147. Latvia (23 December 2004)
148. Burkina Faso (25 January 2005)
149. Estonia (26 August 2005)
150. Belarus (30 August 2006)
151. Niue (11 October 2006)
152. Montenegro (23 October 2006)
153. Republic of Moldova (6 February 2007)
154. Lesotho (31 May 2007)
155. Morocco (31 May 2007)
156. Congo (9 July 2008)
157. Liberia (25 September 2008)
158. Switzerland (1 May 2009)
159. Dominican Republic (10 July 2009)
160. Chad (14 August 2009)
161. Malawi (28 September 2010)
162. ailand (15 May 2011)



(b)

92. Nepal (2 November 1998)
93. Belgium (13 November 1998)
94. Poland (13 November 1998)
95. Ukraine (26 July 1999)
96. Vanuatu (10 August 1999)
97. Nicaragua (3 May 2000)
- 98.



## II. LEGAL INFORMATION RELEVANT TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

N O T E

Marshall Islands

### *Republic of the Marshall Islands Maritime Zones Declaration Act 2016*

AN ACT to amend Chapter 1, Title 33 of the MIRC by repealing the Marine Zones Act of 1984, and replace with the Maritime Zones Declaration Act to provide for all the internal waters, the archipelagic waters, the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf of [...]

*§103. References to international law*

Where in this Act it is provided that anything shall be done by the Government of the Marshall Islands or by Cabinet, or any law or order shall be made, or any other thing shall be done, in accordance with the rules of international law, the question whether it was so done or made, is non-justiciable.

*§104. Application of this Act*

The provisions of this Act shall be read subject to the provisions of any other treaty or international obligation which is finally accepted by or on behalf of the Republic and approved by the Nitijela by Resolution.

Part . Local government waters

*§105. Local government waters*

The Minister may confirm by declaration the outer limits of waters lying within the jurisdiction of a local government pursuant to Article IX, section 1(2) and (3) of the Constitution of the Republic of the Marshall Islands. Such a declaration shall only be made following consultation between the National Government and the relevant local government.

Part . Territorial sea

*§106. Territorial sea*

- (1) Subject to subsection (2), the territorial sea comprises those areas of the sea having:
  - (a) as their inner limits, the baseline described in section 107(1); and
  - (b) as their outer limits, a line measured seaward from that baseline, every point of which is distant 12 nautical miles from the nearest point of that baseline.
- (2) Where archipelagic baselines are drawn pursuant to section 107(2), the territorial sea comprises those areas of the sea referred to in subsection (1) above and, to the extent that they are not thereby included, those additional areas of the sea having:
  - (a) as their inner limits, archipelagic baselines referred to in section 107(2); and
  - (b) as their outer limits, a line measured seaward from those archipelagic baselines, every point of which is distant 12 nautical miles from the nearest point of those archipelagic baselines.

*§107. Baselines of the territorial sea*

- (1) Subject to subsection (2) below, the baseline from which the breadth of the territorial sea is measured shall be:
  - (a) where a reef is present
    - (i) the low-water line of the seaward side of the reef fringing the coast of any part of the Republic or bounding any lagoon adjacent to any part of that coast; and
    - (ii) where there are breaks in reefs or entrances to lagoons, any closing lines drawn between the natural entrance points at low water or between the geographic coordinates of points declared by order of the Minister; or
  - (b) where a reef is not present, the low-water line of the coast itself and outermost permanent harbour works.
- (2) Where there is an archipelago, the Minister may, by order, declare, in accordance with international law, the geographic coordinates of points between which archipelagic baselines are to be drawn.
- (3) Archipelagic baselines drawn pursuant to subsection (2) above shall not affect the baselines referred to in Article IX, subsection 1(2) of the Constitution of the Republic of the Marshall Islands.

*§108. Internal waters*

The internal waters of the Republic are all waters on the landward side of the low-water line and closing lines described in section 107(1), including lagoons.

Part . Archipelagic waters

*§109. Archipelagic waters*

the archipelagic waters of the Republic comprise all waters, other than internal waters, enclosed by the archipelagic baselines drawn pursuant to section 107(2).

*§110.*

*§115. Rights in the contiguous zone*

Within the contiguous zone, the Republic has all rights necessary:

- (a) to prevent infringement of its customs, fiscal, immigration and sanitary laws and regulations within its land areas, territorial sea and archipelagic waters; and
- (b) to punish any such infringement, and all relevant laws of the Republic extend to the contiguous zone accordingly.

*§116. Rights in the exclusive economic zone and continental shelf*

- (1) Within the exclusive economic zone, the Republic has sovereign rights:
  - (a) for the purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of:
    - (i) the seabed;
    - (ii) the subsoil under the seabed; and
    - (iii) the waters over the seabed; and
  - (b) with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.
- (2) Within the continental shelf, the Republic has:
  - (a) sovereign rights for the purpose of exploring it and exploiting its natural resources; and
  - (b) exclusive rights to authorise and regulate drilling on it for all purposes.
- (3) Within the exclusive economic zone and the continental shelf, the Republic has the exclusive right to construct, authorise and regulate the construction, operation and use of:
  - (a) artificial islands;
  - (b) installations and structures for the purposes provided in subsection (1), marine scientific research, the protection and preservation of the marine environment and other economic purposes; and
  - (c) installations and structures which may interfere with the Republic's exercise of its rights in the exclusive economic zone or continental shelf.
- (4) Within the exclusive economic zone and continental shelf, the Republic has exclusive jurisdiction over the artificial islands, installations and structures referred to in subsection (3), including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.
- (5) Within the exclusive economic zone and continental shelf, the Republic:
  - (a) has jurisdiction with respect to protection and preservation of the marine environment, and
  - (b) has the right to regulate, authorise and conduct marine scientific research.
- (6) Within the contiguous zone, the exclusive economic zone and the continental shelf, the Republic has such other rights as are conferred or recognised by international law.

*§117. Rights of other States in maritime zones*

- (1) The Minister may, by order:
  - (a) designate sea lanes and air routes suitable for the continuous and expeditious passage of foreign ships and aircraft through and over the archipelagic waters and the adjacent territorial sea;
  - (b) prescribe traffic separation schemes for the purpose of ensuring the safe passage of ships through narrow channels in any such sea lanes; and
  - (c) prescribe sea lanes and traffic separation schemes for foreign ships exercising the right of innocent passage through the territorial sea.
- (2) In sea lanes and air routes designated under subsections (1)(a) and (1)(b), all ships and aircraft may, in accordance with international law, enjoy the right of navigation and overflight, in their normal modes, for the purpose of continuous, expeditious and unobstructed transit through and over the archipelagic

waters and the adjacent territorial sea, from one part of the high seas or exclusive economic zone to another part of the high seas or exclusive economic zone.

- (3) Until sea lanes and air routes are designated under subsections (1)(a) and (1)(b), the rights of navigation and over flight referred to in subsection (2) may be exercised through and over all routes normally used for international navigation and over flight.
- (4) Subject to subsections (2) and (3), ships of all States have, in accordance with international law, the right of innocent passage through the territorial sea and the archipelagic waters of the Republic.
- (5) Subject to this Act, any other law of the Republic, and international law, all States shall enjoy in the exclusive economic zone the high seas freedoms, navigation and over flight and of the laying of submarine cables and pipelines, and all other internationally lawful uses of the sea related to those freedoms.



Section 302 insert "s.302(aa) 'archipelagic waters' means the area of sea declared to be the archipelagic waters of the Republic of the Marshall Islands under the

## 2. *Baselines*

the baselines of the territorial sea of the Republic are set out in Parts 1, 2 and 3 of Schedule 1.

## 3. *Maritime zones outer limits*

the outer limits of the territorial sea, contiguous zone, exclusive economic zone and continental shelf of the Republic are set out in Parts 4, 5, 6 and 7 of Schedule 1.

## 4. *Guide to reading Schedule 1*

1. In the tables in Parts 1 and 2 of Schedule 1:

(a) lines are generated by reference to points,

(b) the first column sets out the point identifier,

(c) the second and third columns set out the geographic coordinates for each point, and

(d) the fourth column sets out the zones measured from the point:

(i) AB stands for endpoint of an archipelagic baseline,

(ii) ES stands for endpoint of an EEZ baseline.

### III. COMMUNICATION BY STATES

#### Iran (Islamic Republic of)

*Note verbale from the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General of the United Nations, 21 April 2016*

[...]

The Permanent Mission of the Islamic Republic of Iran [...] with reference to the communication dated 23 September 2015, jointly submitted by the Permanent Missions of the State of Kuwait and the Kingdom of Saudi Arabia to the United Nations, has the honor to state the following:

1. The Islamic Republic of Iran, as repeatedly reiterated on many occasions, does not recognize any claim of sovereign rights for the purpose of exploring and exploitation the resources of the seabed and subsoil of the marine areas between Iran and its neighbors prior to the delimitation of maritime boundaries with the relevant neighboring states.
2. The Islamic Republic of Iran has always pursued the policy of friendship and good neighborliness toward all neighboring States and, on the basis of this fundamental policy, expects its neighboring States to avoid using concepts and terms that are incompatible with the principle of goodwill and do not contribute to mutual understanding and trust.
3. While recalling the principle of international law that a bilateral treaty does not create any obligation for a third party (*pacta tertiis nec nocent nec prosunt*), the Islamic Republic of Iran reiterates its reserved position on articles 1 and 7 of the bilateral Agreement between Kuwait and Saudi Arabia, dated 2 July 2000, concerning the submerged area adjacent to the partitioned zone.
4. In the meantime, the Islamic Republic of Iran, based on its principled and longstanding position, has always expressed its readiness to conduct separate bilateral negotiations with the governments of Kuwait and Saudi Arabia, in order to delimit its maritime boundaries adjacent to the partitioned zone. The Islamic Republic of Iran is committed to continue this approach which is a manifestation of its good faith and is rooted in the established norms and principles of international law.

The Permanent Mission of the Islamic Republic of Iran to the United Nations would appreciate if the Secretary-General could have the present note verbale circulated to all Member States and published in the next issue of the *Law of the Sea Bulletin*.

[...]

---

<sup>1</sup> S. . [www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/irn\\_re\\_sau\\_kwt\\_Apr\\_2016e.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/irn_re_sau_kwt_Apr_2016e.pdf).

#### IV. OTHER INFORMATION RELEVANT TO THE LAW OF THE SEA

##### A. List of Conciliators and Arbitrators Nominated under Annexes V, VII and VIII of the Convention

List of conciliators and arbitrators nominated under article 2 of annexes V and VII to the Convention as at 31 July 2016

State Party	Nominations	Date of deposit of notification with the Secretary-General
Argentina	Dr. Frida María Armas P rter, Conciliator and Arbitrator	28 September 2009
	Ambassador Horacio Adolfo Basabe, Conciliator and Arbitrator	4 September 2013
	Professor Marcelo Gustavo Kohen, Conciliator and Arbitrator	4 September 2013
	Minister Holger Federico Martinsen, Conciliator and Arbitrator	4 September 2013
Australia	Sir Gerard Brennan AC KBE, Arbitrator	19 August 1999
	Mr. Henry Burmester QC, Arbitrator	19 August 1999
	Professor Ivan Shearer AM, Arbitrator	19 August 1999
Austria	Professor Dr. Gerhard Hafner, Department of International Law and International Relations, University of Vienna, Member of the Permanent Court of Arbitration, The Hague, Conciliator at the OSCE Court of Conciliation and Arbitration, Former Member of the International Law Commission, Conciliator and Arbitrator	9 January 2008
	Professor Dr. Gerhard Loibl, Professor at the Diplomatic Academy of Vienna, Conciliator and Arbitrator	9 January 2008
	Ambassador Dr. Helmut Tichy, Deputy Head of the Office of the Legal Adviser, Austrian Federal Ministry for European and International Affairs, Conciliator and Arbitrator	9 January 2008
	Ambassador Dr. Helmut Türk, Judge at the International Tribunal for the Law of the Sea, Member of the Permanent Court of Arbitration, The Hague, Conciliator and Arbitrator	9 January 2008

# 24 (trunc) s 7 D (5) Adm (1) of 178 Non (beam Per) AM, A (16) (or - 17) A 28 (351) B40 - 9 160 (24) - 3 The 0-3583 330 International Rel



State Party	Nominations	Date of deposit of noti cation with the Secretary-General
-------------	-------------	---

Japan	Judge Hisashi Owada, Judge, International Court of Justice, Arbitrator	
-------	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

--	--	--

State Party	Nominations	Date of deposit of notification with the Secretary-General
Portugal	Professor José Manuela Pureza, Conciliator	5 October 2011
	Dr. João Madureira, Conciliator	5 October 2011
	Dr. Mateus Kowalski, Conciliator	5 October 2011
	Dr. Tiago Pitta e Cunha, Conciliator	5 October 2011
	Professor Nuno Sérgio Marques Antunes, Arbitrator	5 October 2011
Republic of Korea	Professor Jin-Hyun Paik, Conciliator and Arbitrator	14 February 2013
Romania	Mr. Bogdan Aurescu, Secretary of State, Ministry of Foreign Affairs, Member of the Permanent Court of Arbitration, Arbitrator	2 October 2009
	Mr. Cosmin Dinescu, Director General for Legal Affairs, Ministry of Foreign Affairs, Arbitrator	2 October 2009
Russian Federation	Vladimir S. Kotliar, Arbitrator	26 May 1997
	Professor Kamil A. Bekyashev, Arbitrator	4 March 1998
	Mr. Alexander N. Vylegjanin, Director of the Legal Department of the Council for the Study of Productive Forces of the Russian Academy of Science, Arbitrator	17 January 2003
Singapore	Professor S. Jayakumar, Professor of Law, National University of Singapore, Conciliator and Arbitrator	5 April 2016
	Professor Tommy Koh, Professor of Law, National University of Singapore, Ambassador-at-Large, Conciliator and Arbitrator	5 April 2016
	Mr. Chan Sek Kbitrator	26 MnRet Ded715ief Justi5 0.556 Td 9

State Party	Nominations	Date of deposit of notification with the Secretary-General
Sudan	Sayed/Shawgi Hussain, Arbitrator	8 September 1995
	Dr. Ahmed Elmufti, Arbitrator	8 September 1995
	Dr. Abd Elrahman Elkhalifa, Conciliator	8 September 1995
	Sayed/Eltahir Hamadalla, Conciliator	8 September 1995
	Professor Elihu Lauterpacht CBE QC, Arbitrator	8 September 1995
	Sir Arthur Watts KCMG QC, Arbitrator	8 September 1995
Sweden	Dr. Marie Jacobsson, Principal Legal Advisor on International Law, Ministry for Foreign Affairs, Arbitrator	2 June 2006
	Dr. Said Mahmoudi, Professor of International Law, University of Stockholm, Arbitrator	2 June 2006
Switzerland	Ms. Laurence Boisson de Chazournes, Professor, Arbitrator	14 October 2014
	Mr. Andrew Clapham, Professor, Arbitrator	14 October 2014
	Mr. Lucius Caisch, Professor, Arbitrator	14 October 2014
	Mr. Robert Kolb, Professor, Arbitrator	14 October 2014
Trinidad and Tobago	Mr. Justice Cecil Bernard, Judge of the Industrial Court of the Republic of Trinidad and Tobago, Arbitrator	17 November 2004
	Sir Michael Wood, Conciliator and Arbitrator	2 November 2010
United Kingdom of Great Britain and Northern Ireland	Sir Elihu Lauterpacht QC, Conciliator and Arbitrator	2 November 2010
	Professor Vaughan Lowe QC, Conciliator and Arbitrator	2 November 2010
	Mr. David Anderson, Conciliator and Arbitrator	2 November 2010
United Republic of Tanzania	Ambassador James Kateka, Judge of ITLOS, Conciliator and Arbitrator	18 September 2013



Permanent Court of Arbitration: *the South China Sea Arbitration*  
(*the Republic of the Philippines v. the People's Republic of China*), 12 July 2016

*the Tribunal renders its award*

A unanimous Award has been issued today by the Tribunal constituted under Annex VII to the United Nations Convention on the Law of the Sea (the "Convention") in the arbitration instituted by the Republic of the Philippines against the People's Republic of China.

This arbitration concerned the role of historic rights and the source of maritime entitlements in the South China Sea, the status of certain maritime features and the maritime entitlements they are capable of generating, and the lawfulness of certain actions by China that were alleged by the Philippines to violate the Convention. In light of limitations on compulsory dispute settlement under the Convention, the Tribunal has

43ph4325(0)10.6(d)(e)-13(a)-6.3(n)-19.1)-07-(5)-3.2(s)-3(o)10.7(n)-5.6(. I)-1-29.2()-19.8th0.9(h)16.3(t o)9.8(i)8.3(o)107.8(ey

*Status of features*

The Tribunal next considered entitlements to maritime areas and the status of features. The Tribunal first undertook an evaluation of whether certain reefs claimed by China are above water at high tide. Features



ernment of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines" dated 7 December 2014 ("China's Position Paper"), in letters to members of the Tribunal from the Chinese Ambassador to the Kingdom of the Netherlands, and in many public statements. The Chinese Government has also made clear that these statements and documents "shall by no means be interpreted as China's participation in the arbitral proceeding in any form."

Two provisions of the Convention address the situation of a party that objects to the jurisdiction of a tribunal and declines to participate in the proceedings:

- (a) Article 288 of the Convention provides that: "In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal."
- (b) Article 9 of Annex VII to the Convention provides that:

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

Throughout these proceedings, the Tribunal has taken a number of steps to fulfil its duty to satisfy itself as to whether it has jurisdiction and whether the Philippines' claims are "well founded in fact and law". With respect to jurisdiction, the Tribunal decided to treat China's informal communications as equivalent to an objection to jurisdiction, convened a Hearing on Jurisdiction and Admissibility on 7 to 13 July 2015, questioned the Philippines both before and during the hearing on matters of jurisdiction, including potential





(c) *Involvement of indispensable third parties*

In its Award on Jurisdiction, the Tribunal considered whether the absence from this arbitration of other States that have made claims to the islands of the South China Sea would be a bar to the Tribunal's jurisdiction. The Tribunal noted that the rights of other States would not form "the very subject-matter of the decision," the standard for a third party to be indispensable. The Tribunal further noted that in December 2014, Viet Nam had submitted a statement to the Tribunal, in which Viet Nam asserted that it has "no doubt that the Tribunal has jurisdiction in these proceedings." The Tribunal also noted that Viet Nam, Malaysia, and Indonesia had attended the hearing on jurisdiction as observers, without any State raising the argument that its participation was indispensable.

In its Award of 12 July 2016, the Tribunal noted that it had received a communication from Malaysia on 23 June 2016, recalling Malaysia's claims in the South China Sea. The Tribunal compared its decisions on the merits of the Philippines' Submissions with the rights claimed by Malaysia and reaffirmed its decision that Malaysia is not an indispensable party and that Malaysia's interests in the South China Sea do not prevent the Tribunal from addressing the Philippines' Submissions.

(d) *Preconditions to jurisdiction*

In its Award on Jurisdiction, the Tribunal considered the applicability of Articles 281 and 282 of the Convention, which may prevent a State from making use of the mechanisms under the Convention if they have already agreed to another means of dispute resolution.

The Tribunal rejected the argument set out in China's Position Paper that the 2002 China-ASEAN Declaration on the Conduct of Parties in the South China Sea prevented the Philippines from initiating arbitration. The Tribunal held that the Declaration is a political agreement and not legally binding, does not provide a mechanism for binding settlement, does not exclude other means of dispute settlement, and therefore does not restrict the Tribunal's jurisdiction under Articles 281 or 282. The Tribunal also considered the Treaty of Amity and Cooperation in Southeast Asia, and the Convention on Biological Diversity, and a series of joint statements issued by the Philippines and China referring to the resolution of disputes through negotiations and concluded that none of these instruments constitute an agreement that would prevent the Philippines from bringing its claims to arbitration.

The Tribunal further held that the Parties had exchanged views regarding the settlement of their disputes, as required by Article 283 of the Convention, before the Philippines initiated the arbitration. The Tribunal concluded that this requirement was met in the record of diplomatic communications between the Philippines and China, in which the Philippines expressed a clear preference for multilateral negotiations involving the other States surrounding the South China Sea, while China insisted that only bilateral talks could be considered.

(e) *Exceptions and limitations to jurisdiction*

In its Award of 12 July 2016, the Tribunal considered whether the Philippines' Submissions concerning Chinese historic rights and the "nine-dash line" were affected by the exception from jurisdiction for disputes concerning "historic title" in Article 298 of the Convention. The Tribunal reviewed the meaning of "historic title" in the law of the sea and held that this refers to claims of historic sovereignty over bays and other near-shore waters. Reviewing China's claims and conduct in the South China Sea, the Tribunal concluded that China claims historic rights to resources within the "nine-dash line", but does not claim historic title over the waters of the South China Sea. Accordingly, the Tribunal concluded that it had jurisdiction to consider the Philippines' claims concerning historic rights and, as between the Philippines and China, the "nine-dash line".

In its Award of 12 July 2016, the Tribunal also considered whether the Philippines' Submissions were affected by the exception from jurisdiction in Article 298 for disputes concerning sea boundary delimitation.

The Tribunal had already found in its Award on Jurisdiction that the Philippines' Submissions do not concern boundary delimitation as such, but noted that several of the Philippines' Submissions were dependent on certain areas forming part of the Philippines' exclusive economic zone. The Tribunal held that it could only address such submissions if there cono(p)9.9(i)-19(n)7.8.5(g)5.2('8(r)--19.4(r17.9(i)-16((n)044j-13(a)-23.3-.6(n)7. T)5

Award of 12 July 2016, the Tribunal reviewed evidence about the reefs and islands claimed by China in the South China Sea and concluded that none is capable of generating an entitlement to an exclusive economic zone. Because China has no possible entitlement to an exclusive economic zone overlapping that of the Philippines in the Spratly Islands, the Tribunal held that the Philippines' submissions were not dependent on a prior delimitation of a boundary.

In its Award of 12 July 2016, the Tribunal also considered whether the Philippines' Submissions were affected by the exception from jurisdiction in Article 298 for disputes concerning law enforcement activities in the exclusive economic zone. The Tribunal recalled that the exception in Article 298 would apply only if the Philippines' Submissions related to law enforcement activities in *China's* exclusive economic zone. Because, however, the Philippines' Submissions related to events in the Philippines' *own* exclusive economic zone or in the territorial sea, the Tribunal concluded that Article 298 did not pose an obstacle to its jurisdiction.

Lastly, in its Award of 12 July 2016, the Tribunal concluded that Article 298 did not pose an obstacle to its jurisdiction.



(b) *the status of features in the South China Sea*

In its Award of 12 July 2016, the Tribunal considered the status of features in the South China Sea and the entitlements to maritime areas that China could potentially claim pursuant to the Convention.

The Tribunal first undertook a technical evaluation as to whether certain coral reefs claimed by China are or are not above water at high tide. Under Articles 13 and 121 of the Convention, features that are above water at high tide generate an entitlement to at least a 12 nautical mile territorial sea, whereas features that are submerged at high tide generate no entitlement to maritime zones. The Tribunal noted that many of the reefs in the South China Sea have been heavily modified by recent land reclamation and construction and recalled that the Convention classifies features on the basis of their natural condition. The Tribunal appointed an expert hydrographer to assist it in evaluating the Philippines' technical evidence and relied heavily on

a matter of fact that China had (a) interfered with Philippine petroleum exploration at Reed Bank, (b) purported to prohibit fishing by Philippine vessels within the Philippines' exclusive economic zone, (c) protected and failed to prevent Chinese fishermen from fishing within the Philippines' exclusive economic zone at Mischief Reef and Second Thomas Shoal, and (d) constructed installations and artificial islands at Mischief Reef without the authorization of the Philippines. The Tribunal therefore concluded that China had violated the Philippines' sovereign rights with respect to its exclusive economic zone and continental shelf.

The Tribunal next examined traditional fishing at Scarborough Shoal and concluded that fishermen from the Philippines, as well as fishermen from China and other countries, had long fished at the Shoal and had traditional fishing rights in the area. Because Scarborough Shoal is above water at high tide, it generates an entitlement to a territorial sea, its surrounding waters do not form part of the exclusive economic zone, and traditional fishing rights were not extinguished by the Convention. Although the Tribunal emphasized that it was not deciding sovereignty over Scarborough Shoal, it found that China had violated its duty to respect to the traditional fishing rights of Philippine fishermen by halting access to the Shoal after May 2012. The Tribunal noted, however, that it would reach the same conclusion with respect to the traditional fishing rights of Chinese fishermen if the Philippines were to prevent fishing by Chinese nationals at Scarborough Shoal.

The Tribunal also considered the effect of China's actions on the marine environment. In doing so, the Tribunal was assisted by three independent experts on coral reef biology who were appointed to assist it in evaluating the available scientific evidence and the Philippines' expert reports. The Tribunal found that China's recent large scale land reclamation and construction of artificial islands at seven features in the Spratly Islands has caused severe harm to the coral reef environment and that China has violated its obligation 9517i

In this respect, the Tribunal noted that both the Philippines and China have repeatedly accepted that the Convention and general obligations of good faith define and regulate their conduct. The Tribunal considered that the root of the disputes at issue in this arbitration lies not in any intention on the part of China or the Philippines to infringe on the legal rights of the other, but rather in fundamentally different understandings of their respective rights under the Convention in the waters of the South China Sea. The Tribunal recalled that it is a fundamental principle of international law that bad faith is not presumed and noted that Article 11 of Annex VII provides that the “award ... shall be complied with by the parties to the dispute.” The Tribunal therefore considered that no further declaration was necessary.

C. **Security Council** **General Assembly** **Security Council**  
**United Nations**<sup>4</sup>

1. A/70/825-S/2016/329: Letter dated 7 April 2016 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General.
2. S/2016/382: Letter dated 25 April 2016 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council.
3. A/70/855-S/2016/406: Letter dated 28 April 2016 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General.
4. A/70/900-S/2016/474: Letter dated 23 May 2016 from the Permanent Representative of Greece to the United Nations addressed to the Secretary-General.
5. A/70/944: 13 June 2016 from the Permanent Representative of Viet Nam to the United Nations addressed to the Secretary-General.
- 6.

ISBN 978-92-1-133855-3

