

Joint Declaration of Judges *ad hoc* Oxman and Schrijver

Consideration of preliminary objections to jurisdiction and admissibility prior to the submission of pleadings on the merits serves the useful purpose of obviating the need to expend the effort necessary to prepare those pleadings in the event that the preliminary objections are upheld. It does, however, mean that on certain issues limited information is available regarding the factual and legal predicates for the claims, and that the parties may not necessarily raise and address all relevant questions at this stage.

The Judgment, wisely in our view, in subparagraph (6) of the *dispositif* defers to the proceedings on the merits questions regarding the extent to which the Special Chamber may exercise its jurisdiction, including questions arising under article 76 of the Convention.

Subparagraph (7) of the *dispositif* reserves for consideration and decision in the proceedings on the merits the question of jurisdiction and admissibility relating to Mauritius' claim stated in paragraph 28 of the Notification. We wish to record our view that subparagraph (7) refers to the claim of violation set forth in paragraph 28 of the Notification, and does not call into question the duty of the Parties to comply with paragraph 3 of article 74 and paragraph 3 of article 83 of the Convention. We trust they will do so in a spirit of understanding and co-operation.

Lastly, pursuant to the rules and practices of the Tribunal, matters concerning scheduling and the hybrid nature of these proceedings were addressed by the President of the Special Chamber in consultation with the Parties. Each of us first learned in the latter part of December 2020 of the communications to which reference is made in paragraphs 29 to 34 of the Judgment. We wish to express our appreciation to the President, the Registry, and the Parties for their discretion in this regard.

(signed)

Bernard H. Oxman

(signed)

Nicolaas J. Schrijver