

SEPARATE OPINION OF JUDGE JESUS

1. Though I share the conclusions reached by the Tribunal in this case, including the finding that the Annex VII tribunal has *prima facie* jurisdiction to entertain the dispute, I do not agree with the reasoning sustained and the interpretation given by paragraphs 48 to 53 of the Order in respect of the application of article 282 of the Law of the Sea Convention, on the relationship between that Convention and the OSPAR Convention.

2. The interpretation made seems to be too narrow, to the point of precluding the possibility that in some cases the choice of procedure under article 282 might be applicable.

3. It is precisely because the parallelism of treaties is a frequent device used by States in regulating their different interests, establishing including the parallelism of procedures for the settlement of disputes that may arise, that article 282 was inserted in the Law of the Sea Convention to indicate which procedure should prevail in case there is a situation of competing settlement procedures between the Law of the Sea Convention and an agreement of a general, regional or bilateral nature.

4. The OSPAR Convention is one of such regional agreements referred to in article 282. The issue here was therefore for the Tribunal to determine whether the procedure indicated in the OSPAR Convention should prevail over the procedures of the Law of the Sea Convention, as claimed by the United Kingdom.

5. Though I share the view that, in the instant case, the OSPAR Convention does not fall within the purview of article 282, I do not share the reasoning sustained by the Order to reach that conclusion.

6. My view is that the OSPAR Convention does not apply in this case because, as can be seen abundantly from the proceedings, the issues covered by that regional Convention and the claims made by Ireland before the OSPAR arbitral tribunal are different from and narrower than those brought before the Annex VII arbitral tribunal of the Law of the Sea Convention.

7. These are in fact different disputes and, therefore, article 282 does not apply to this case.

8. If, on the contrary, the Tribunal were to be convinced that we were before exactly the same dispute, arising under the two Conventions, then

article 282 would have the OSPAR Convention procedure prevailing over the Law of the Sea Convention procedures.

9. The Order, in this respect, seems to have an interpretation that in practice has the effect of denying the implementation of article 282. This is a view that I do not share.

(Signed) José Luis Jesus