

The contribution of ITLOS to the development of the Law of the Sea

OC - (ILA-14043) - THE DECLINE OF DECLARATORY DELIMITATION AND RISE OF CONSTITUTIVE DELIMITATION

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Abstract

The delimitation process has conceptually been considered to reflect preexisting maritime boundaries as the delimitation has not been considered to constitute *do novo* lines because the delimitation process has been seen as a declaratory exercise. It has been advanced that it follows necessarily from the notion of coastal States' inherent rights to the continental shelf that the rights in question can not be impaired by a third State in any fashion. An exercise of rights on an alleged competence by another State prior to a delimitation being established would be no different from an exercise of right subsequent to the delimitation. Thus, any alleged exercise of rights by a third State in an undelimited area, which subsequently would be recognized to be part of the continental shelf of the neighbouring State could consequently constitute an international wrongful act under international law and engage the international responsibility of the relevant State(s).

The Special Chamber of ITLOS in the Ghana / Cote d'Ivoire case clarified numerous aspects in so far concerns the nature of the delimitation operation. According to the Special Chamber the delimitation consists in giving one entitlement priority over the other and therefore the delimitation of the continental shelf has a constitutive nature rather than declaratory. The approach of the Special Chamber can give rise to numerous intricate legal questions that may arise in future delimitation cases.

Palavras-chave : Delimitation, declaratory nature, constitutive nature