

Research Brief

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Understanding ITLOS - perspectives from Judge-elect Thembile Joyini

On the 12th of July, two researchers from the Ocean Regions Programme interviewed Judge-elect Thembile Joyini, whose election as Judge of the International Tribunal for the Law of the Seas (ITLOS) starts on the 1st of October 2023. This is the first of two articles that explicate some of the key findings of the interview. In particular, this article focuses on sharing some of Judge-elect Joyini's key insights on matters relating to the ITLOS.

The Tribunal is an independent judicial body that was established under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). According to Joyini, the Tribunal is essentially the world court on oceans and the law of the sea, and it is herein that lies one of its greatest strengths, namely, that it specifically focuses on maritime issues.

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ITLOS is a specialised court with specialised judges, and whereas other courts such as the International Court of Justice (ICJ) often focus on a plethora of issues, ITLOS is specifically there to deal with issues related to the maritime domain, such as concerns over the delimitation of maritime zones and the protection of the marine environment.

In this sense, Joyini argues, ITLOS should be the first point of call for countries dealing with such issues.

A further strength of ITLOS is its representative nature. The Tribunal is comprised of 21 members in total, of which five judges represent Asia, five Africa, three Eastern Europe, four Latin America and the Caribbean, three Western Europe and then one member who can come from either Africa, Asia or Western Europe. According to Joyini, judges come from all corners of the world and thus the world is truly represented.

The advantage of having such broad representation is that in the Tribunal, issues are not only related to international law. Rather, domestic law is inherently intertwined, especially when it comes to issues with foreign vessels being impounded in the waters of another state. In this regard, it is important to have judges from all areas of the world who may be familiar with the domestic law of the states in their regions. At the same time, it also offers judges on the Tribunal the opportunity to become familiar with the domestic law of different states and it is because of this reason that Joyini describes his election as Judge as a learning journey.

While the above certainly attests to some of the strengths of ITLOS, it must also be noted that one of the shortcomings is that in international law, unlike in domestic law, there is no mechanism for enforcement once a ruling has been made. This implies that should a state not comply with a ruling, ITLOS cannot force

a state to accept a ruling. However, despite this, in such cases, the role of political pressure often serves to influence states into complying with rulings. Generally speaking, states do not want to be seen as flouting international law as this could result in reputational damage to the country.

On another note, while territorial and maritime disputes tend to headline the news, there are other pertinent issues, such as the rise of sea levels and the impact of climate change that especially threaten low-lying littoral and island states. Although such issues have not always received sufficient attention, positive progress has been seen recently.

For example, the request made by the Commission of Small Island States (COSIS) on the 12th of December 2022 for an Advisory Opinion, is a step in the right direction for raising the concerns of smaller states. This request is unprecedented as it is the first time that an Advisory Opinion has been sought on specific issues related to sea level rise and climate change.

Judge-elect Joyini affirmed the importance of this request, stating that there was massive interest when this request was made. Serving as a panelist on one of the panel discussions on this unprecedented process in New York in January 2023 Joyini explained, that the room was filled to capacity because of the interest in the matter. In this sense, he notes, the role of Advisory Opinions, although not being legally binding, are extremely important. Advisory Opinions

provide legal clarity and certainty as well as judicial guidance. They are an authoritative statement of the law that has legal effect, and their outcomes are often highly regarded and countries that ignore them, do so at their own peril. Furthermore, in the words of Judge-elect Joyini, the findings and advice of the Advisory Opinion can very much be considered “marching orders” that would be in the best interest of states to adhere to. Ultimately, Advisory Opinions, as one of the functions of ITLOS, play an instrumental role in putting a spotlight on

issues that needed clarity and especially issues that may affect small states.

Judge-elect Joyini’s election to the Tribunal comes at an opportune moment when new issues are being brought to the Tribunal, especially those related to climate change and its human security impact. In this sense, it is positive and reassuring to know that one of the judges on the Tribunal is an African with a deep interest in and understanding of the existential importance of these matters to littoral and small islands states in the global South. •