

**STATEMENT BY THE DELEGATION OF THE REPUBLIC OF KENYA ON AGENDA
ITEM 17: CONSIDERATION OF A REQUEST FOR AN ADVISORY OPINION FROM
THE SEABED DISPUTES CHAMBER OF THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA**

Delivered on the 30th July 2026

Mr. President,

Kenya aligns itself with the statement delivered by the distinguished representative of the African Group.

Kenya recognizes the seriousness of the concerns that have led to the inclusion of this matter and welcomes the opportunity for Member States to consider the legal implications of unilateral activities undertaken outside the framework of the Convention and the 1994 Agreement.

Against this background, Kenya considers the present proposal to be a progressive and constructive attempt to identify a durable legal response capable of safeguarding the integrity of the regime established under Part XI, protecting the common heritage of humankind and deterring unilateral action.

Kenya is therefore thanks Madam Secretary General and the Secretariat for the proposed questions that have been placed before member States for their consideration.

At the same time, Kenya believes that the Assembly would benefit from a more substantive discussion of the questions presented, including the meaning and scope that States Parties themselves attribute to the obligations contained in article 137 of the Convention.

In Kenya's view, the first step should be to identify those elements of article 137 on which States Parties already share a common understanding. The Assembly may then determine which legal uncertainties remain unresolved and require authoritative judicial clarification.

This approach is consistent with article 31 of the Vienna Convention on the Law of Treaties. Article 31 provides that a treaty is to be interpreted in good faith, in accordance with the ordinary meaning of its terms, read in their context and in light of the treaty's object and purpose. It further requires account to be taken of any subsequent agreement between the parties regarding the interpretation or application of the treaty, as well as any subsequent practice that establishes the agreement of the parties regarding its interpretation.

A substantive discussion within the Assembly would therefore not be merely procedural. It would provide States Parties with an opportunity to articulate their understanding of article 137, identify areas of convergence and, where possible, establish a common understanding regarding its interpretation and implementation.

Where such a common understanding can be reached, Kenya believes that it should be clearly reflected in the decisions of the Authority. Where consensus cannot be achieved, or where genuine legal uncertainty remains, those specific and focused questions may appropriately be referred to the Seabed Disputes Chamber for an advisory opinion.

This would enable the Authority to narrow any questions ultimately submitted to the Chamber to the core legal issues on which uncertainty or disagreement genuinely persists.

Kenya advances this proposal because we believe that, as far as possible, States Parties should first endeavour to reach agreement on matters relating to the interpretation and implementation of the Convention. Resort to an advisory opinion should complement, rather than replace, the responsibility of the Authority and its members to engage substantively with the provisions of the Convention.

Kenya recognizes, however, that an agreement reached within the Assembly may not resolve every issue. In particular, questions concerning the customary international law status of article 137 and its application to States that are not parties to the Convention may still require independent judicial clarification. Those residual questions could then be formulated with greater precision and submitted to the Chamber.

Kenya therefore considers that the Authority can agree on a defined period for further deliberation. We would support inviting written submissions from member States on the interpretation and application of article 137, relevant State practice and the precise formulation of any questions that may require judicial clarification.

On the basis of those submissions, the Secretariat could prepare a compilation of the submissions for consideration by member States.

Kenya therefore supports deferring a decision on the proposed request while retaining the matter for structured, transparent and Member-State-led consideration. We would support inviting written submissions from Member States and returning to the matter at the thirty-second session, with a view to determining whether any residual and precisely formulated legal questions require referral to the Seabed Disputes Chamber.

I thank you, Mr. President.