

“UNCLOS at 30”

Expert Panel Discussion

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1. Introduction

It is a great honor and privilege for me to have been invited to this Expert Panel Discussion on the theme “UNCLOS at 30” to celebrate the thirtieth Anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea.

Allow me to say just a few words about the law of the sea from historical perspective. The 1958 Geneva Conventions on the Law of the Sea codified the customary international law of the sea to certain extent and also established the regime of the continental shelf and the contiguous zone. States however were unable to agree on the breadth of the territorial sea under the Convention on the Territorial Sea of 1958. Given this lack of agreement on the breadth of the territorial sea, a number of coastal States unilaterally claimed territorial seas extending 12 nautical miles or more, while others maintained the traditional 3-nautical-mile limit. This gave rise to disputes, including, for instance, over the arrest by a coastal State claiming a 12-nautical-mile territorial sea of fishing vessels of a State maintaining the 3-nautical-mile territorial sea. The Convention on the Continental Shelf of 1958 left room for differing interpretations in respect of the outer limits of the shelf, which were determined by reference to the depth of 200 meters or, beyond that point, to the exploitability of the seabed resources. These provisions also engendered disputes among States concerning coastal States’ national jurisdiction. The legal disorder of the sea was even aggravated by the unilateral establishment by major maritime States in the seventies of fishery zones or exclusive economic zones extending to 200 nautical miles before the conclusion of the Third United Nations Conference on the Law of the Sea.

The 1982 United Nations Convention on the Law of the Sea (“the Convention”) which is often referred to as the “Constitution of the Sea”, put an end to the legal disorder reigning in respect of the sea. In addition to the then existing maritime zones under national jurisdiction, the Convention established new regimes such as those for straits used for international navigation, archipelagic waters and the exclusive economic zone, and redefined the continental shelf within and beyond 200 nautical miles. Further, it created an entirely new international regime, that of the deep seabed Area beyond national jurisdiction, which is the common heritage of mankind. As these complex provisions may give rise to disputes between States parties to the Convention, it set up an institutional framework for implementing its provisions. In addition to the existing institutions such as the United Nations, the Specialized Agencies and the International Court of Justice, the Convention established the Commission on the Limits of the Continental Shelf (the “Commission”), the International Seabed Authority (the “Authority”) and the International Tribunal for the Law of the Sea (the “Tribunal”) to ensure the smooth implementation of its complex provisions.

2. Dispute settlement system under the Convention

The Convention established an innovative, complex yet flexible system of dispute settlement to ensure the proper interpretation and efficient application of its provisions based on a delicate balancing of divergent interests of nations. Part XV of the Convention gives States Parties the choice of one or more compulsory procedures leading to binding decisions; these procedural settings include the Tribunal, the International Court of Justice, and arbitration. The Tribunal is a new judicial institution specialized in law of the sea matters and established under the Convention as a key element of its dispute settlement system.

Nineteen cases have been filed with the Tribunal since it began operation in 1996. These include cases involving prompt release of vessels and crews, provisional measures for preventing serious harm to the marine environment and cases on the merits. Recent matters decided by the

Tribunal include the advisory opinion given last year by its Seabed Disputes Chamber (the “Chamber”) at the request of the Council of the Authority and the judgment of 14 March 2012 on the dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal.

3. Advisory Opinion of the Chamber

In 2010 the Council of the Authority requested the Chamber to render an advisory opinion on several questions regarding the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the International Seabed Area in accordance with the Convention and with the 1994 Agreement relating to the implementation of Part XI of the Convention. Fourteen States Parties to the Convention, the Authority and four other international organizations expressed their views by way of written or oral statements. The Chamber, after having examined these views, delivered its advisory opinion on 1 February 2011, a little less than nine months after the request was submitted. In its advisory opinion, the Chamber explained the nature and extent of the responsibilities and obligations of a sponsoring State and gave guidance as to the necessary and appropriate measures which a sponsoring State must take. Thus the Chamber facilitated the work of the Authority by clarifying the relevant provisions of the Convention and related documents.

4. Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal

This case submitted to the Tribunal on 14 December 2009, is the first maritime delimitation case to have come before the Tribunal. By the judgment rendered on 14 March 2012, the Tribunal delimited the territorial sea, the exclusive economic zone and the continental shelf within 200 nautical miles, as well as the continental shelf beyond 200 nautical miles between Bangladesh and Myanmar. With regard to the continental shelf beyond 200 nautical miles, it should be pointed out that the Commission

has decided, in light of the dispute between Myanmar and Bangladesh, to defer consideration of the two States' respective submissions on the limits of the continental shelf beyond 200 nautical miles. If the Tribunal had declined to delimit the continental shelf beyond 200 nautical miles, the resolution of the issue concerning the establishment of the outer limits of the continental shelf of these States might have remained in an impasse. The Tribunal concluded: "[I]n order to fulfil its responsibilities under [...] the Convention in the present case, it has an obligation to adjudicate the dispute and to delimit the continental shelf between the Parties beyond 200 nautical miles. Such delimitation is without prejudice to the establishment of the outer limits of the continental shelf in accordance with article 76, paragraph 8, of the Convention". This is the first judgment of an international court or tribunal delimiting the continental shelf beyond 200 nautical miles.

It is noteworthy that the decision in the case was delivered little more than two years after the proceedings were instituted, which is quite a short period for a complex delimitation case, and one on which Bangladesh and Myanmar had negotiated for more than three decades without reaching agreement.

5. Concluding remarks

It is gratifying to note that the Tribunal delivered two important decisions—the advisory opinion of the Chamber and the judgment on the dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal—in time for the thirtieth anniversary of the Convention. As stated above, the activities of the Commission, the Authority and the Tribunal established under the Convention are different but complementary to each other so as to ensure coherent and efficient implementation of the Convention. I am delighted to report to the Panel that the Tribunal was able to make its contribution to achieving this end by its delivery of these two recent decisions.