

ARF Seminar on Regional Confidence Building and the Law of the Sea

Session 1: International Legal Regime for Disputed Maritime Areas

“International Legal Rules for Maritime Delimitation and Procedures for the Settlement of Maritime Disputes”

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Introduction

Need for the Solution in Accordance with Relevant Rules of International Law, Including the United Nations Convention on the Law of the Sea (UNCLOS)

1. Final Settlement of Maritime Disputes
2. Effective and Stable Utilization of Marine Resources in the Disputed Maritime Areas

1. The Significance of the Compulsory Jurisdiction of International Courts and Tribunals under Part XV of the UNCLOS

- (1) The International System for the Maintenance of the International Peace and Security and the Institutionalization of the Peaceful Means to Settle International Disputes
- (2) The Importance of the Arbitration and Judicial Settlement as Peaceful Means to Settle International Disputes
- (3) Efforts to Enhance the Compulsory Jurisdiction of International Courts and Tribunals
- (4) Compulsory Jurisdiction of International Courts and Tribunals in Part XV of UNCLOS (Enhancement of the Compulsory Jurisdiction in Section 2)

2. Limits of the Compulsory Jurisdiction of International Courts and Tribunals under Part XV, Section 2

(1) Conditions for Resorting to the Compulsory Jurisdiction under UNCLOS (Articles 286 and 288)

(i) Dispute concerning the interpretation or application of UNCLOS

Chagos Marine Protected Area Case, Award of 18 March 2015

... Dismissal of the first and second submissions

Philippines v. China Case, Award of 29 October 2015

... Existence of a dispute concerning the interpretation and application of UNCLOS

2. Limits of the Compulsory Jurisdiction of International Courts and Tribunals under Part XV, Section 2

(1) Conditions for Resorting to the Compulsory Jurisdiction under UNCLOS (Articles 286 and 287)

(ii) No settlement has been reached by recourse to section 1 (Articles 281, 282 and 283)

Southern Bluefin Tuna Cases, Arbitral Award of 4 August 2000 (Article 281)

Chagos Marine Protected Area Case, Award of 18 March 2015 (Article 283)

Philippines v. China, Award of 29 October 2015 (Articles 281, 282 and 283)

2. Limits of the Compulsory Jurisdiction of International Courts and Tribunals under Part XV, Section 2

(2) Declaration in Pursuance with Article 287

(i) Scope of the Compulsory Jurisdiction Based on the Declarations Made by the Parties

M/V “Louisa” Case, Judgment of ITLOS of 18 May 2013

(ii) Limitations and Exceptions to applicability of the Compulsory Jurisdiction (Articles 297 and 298)

Arctic Sunrise Case, Arbitral Award of 26 November 2014

(3) Problems of the Enforcement of the Judgment of a Court or Tribunal (Lack of the Ultimate Organ with the General Competence to Enforce a Judgment)

3. The Importance of the Cooperation of the Disputing Parties

(1) The Significance of the Compulsory Jurisdiction under UNCLOS

“[T]he unilateral invocation of the arbitration procedure cannot by itself be regarded as an abuse of right contrary to Article 300 of UNCLOS, or an abuse of right contrary to general international law. Article 286 confers a unilateral right, and its exercise unilaterally and without discussion or agreement with the other Party is a straightforward exercise of the right conferred by the treaty, in the manner there envisaged ...”

(Barbados v. Trinidad and Tobago, para. 208 and the Philippines v. China, para. 126)

3. The Importance of the Cooperation of the Disputing Parties

(2) Contribution of the Compulsory Jurisdiction to the Final Settlement of a Dispute

(i) Change of the relationship between the parties and the amicable settlement of the dispute

(ii) Competence of an international court or tribunal despite the non-appearance of one of the parties

(iii) Decisions on a part of the submissions and their contribution to the final settlement of the whole dispute

(3) Cooperation between the Disputing Parties to Reach the Final settlement of the Dispute after the Final Decision of an International Court or Tribunal

3. The Importance of the Cooperation of the Disputing Parties

(4) The Necessity to Consider the Mechanism Enabling the Disputing States to Utilize Marine Resources Pending the Settlement of a Dispute

(i) Paragraph 3 of Articles 74 and 83

Provisional arrangements to utilize the marine resources pending the final settlement of the dispute

Obligation to refrain from exercising unilateral measures that may jeopardize or hamper the reaching of the final agreement

Importance of the cooperation between or among States concerned to ensure the appropriate function of the provisional arrangement after they establish it

(ii) International Cooperation in Article 123

Importance of the international cooperation between or among States for the appropriate utilization of the marine living resources and the management of the marine environment

Concluding Remarks

Thank you.