International Tribunal for the Law of the Sea
A Presentation
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ARF Seminar on UNCLOS, 8 to 9 March 2011

Manila, Philippines

Presentation Summary

1. Basic facts

The International Tribunal for the Law of the Sea is one of the three institutions established under the 1982 United Nations Convention on the Law of the Sea (Convention). The Convention was adopted on 10 December 1982 and contains 320 articles. It entered into force on 16 November 1994.

The Tribunal is composed of 21 members elected by the States parties to the Convention « from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea ». They serve for a term of 9 years and may be re-elected. Further, the composition of the Tribunal must be such that the world's major legal systems and geographical regions are represented.

2. Jurisdiction of the Tribunal

A. Disputes arising out of the interpretation and application of the Convention

As you know, the core competence of the Tribunal is to deal with disputes arising out of the Convention. In other words, every time a dispute relates to a provision of the Convention (320 articles) or every time it is alleged that State did not comply with a provision of the Convention, the Tribunal is competent.

With respect to disputes relating to the Convention, the Tribunal is open to States Parties to the Convention. This means the 161 Parties which includes the European Community which have ratified or acceded to the Convention. It is also possible for non States Parties, such the Authority, a state enterprise or a natural or juridical person, to appear before the Tribunal with respect to disputes relating to the exploration and exploitation of the deep seabed area.

B. The Tribunal and the mechanism for the settlement of disputes as provided by the Convention

Under Part XV of the Convention, the Tribunal is not the only forum available to parties. States Parties have the freedom to choose: the Tribunal, the International Court of Justice, arbitration under annex VII and special arbitration under annex VIII. The choice of the competent forum is made by virtue of a declaration made under article 287 of the Convention, to be submitted to the depositary of the Convention, the Secretary-General of the United Nations.

In practice of the 161 States Parties, only 43 Parties made declarations under article 287. Various combinations have been made concerning the means of dispute settlement chosen by these 43 States. Since in the absence of declarations, States are deemed to have chosen arbitration, this shows clearly that in most of the cases arbitration will be the only mean to settle dispute except if the parties decide otherwise.

C. Compulsory jurisdiction of the Tribunal

The Tribunal is competent to deal with certain cases independently of any declaration or expression of consent by the respondent State. This so called “compulsory jurisdiction” of the Tribunal applies in three instances:

- The first concerns disputes concerning Part XI of the Convention (exploration and exploitation of the deep seabed resources) which are to be submitted to the Seabed Disputes Chamber

- The second relates to the prompt release of vessels and crews (article 292). When the flag State of the detained vessel alleges that the detaining State did not comply with these provisions of the Convention relating to the release of an arrested vessesl, the dispute relating to the release of the vessel may be submitted to the Tribunal if, after ten days from the date of detention, no agreement was reached between the two parties of the dispute.

- The third concerns the prescription of provisional measures pending the constitution of an arbitral tribunal to which a dispute is being submitted under the Convention.

In this respect it has to be noted that most of the cases submitted to the Tribunal have been submitted on the basis of the “compulsory” jurisdiction of the Tribunal.

D. Disputes arising out of agreements other than the Convention

The jurisdiction of the Tribunal is not limited to disputes arising out of the 1982 Convention. In accordance with article 21 of the Statute, the jurisdiction of the Tribunal comprises all matters provided for in any other agreement which confers jurisdiction on the Tribunal. A number of agreements have been concluded which contain provisions stipulating that disputes arising out of the interpretation or application of these agreements could be submitted to the Tribunal.

3. Advisory proceedings

The Tribunal may also give advisory opinion on legal questions. Indeed, the Convention provides that the International Seabed Authority may address requests for advisory opinions to the Seabed Disputes Chamber, a Chamber consisting of 11 members of the Tribunal.

Requests for advisory opinions may also be submitted to the Tribunal pursuant to article 138 of the Rules of the Tribunal. Article 138 of the Rules states that the Tribunal "may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion".

4. Procedure

The rules applicable to proceedings before the Tribunal are contained in the Rules of procedure adopted by the Tribunal in 1997. Prospective parties may also consult the guidelines on the preparation and presentation of cases. These guidelines provide useful information on the manner in which applications and pleadings may be filed with the Registry. Both texts are available on the web site of the Tribunal.

Some of highlights of the procedure, which may be of interest to this audience, are as follows:

A. Costs

The expenses relating to the functioning of the Tribunal are covered by the contributions of the States Parties. Therefore, the parties to a case have only to bear the expenses relating to counsel and advocates as well as the accommodation expenses during their stay in Hamburg for the hearing.

A trust fund has been set up in 2000 in order to assist States, in particular developing States who are parties to a case before the Tribunal. The fund is maintained by the UN Division for Ocean Affairs and the Law of the Sea.

B. Judge *ad hoc*

Parties to a case have the right to appoint judges *ad hoc* of their choice, who will sit with the elected judges of the Tribunal. This may happen when a judge of the Tribunal has the nationality of one of the parties to the case (Belize v. France; Ireland v. the United Kingdom). Likewise, if there is no judge of the nationality of the parties, each party may appoint a judge *ad hoc*. The expenses relating to the participation of judges *ad hoc* in the proceedings are covered by the Tribunal.

C. Chambers

Unless otherwise provided, cases are dealt with by the Tribunal consisting of 21 Judges. Parties to a case may also request that a case be heard by a chamber composed of 3 or more of the elected judges. They may choose a standing chamber.[1] They may also request the constitution of an ad hoc chamber. In this case, the composition of the chamber will be determined by the Tribunal with the approval of the parties.

D. Institution of proceedings

Proceedings before the Tribunal are instituted by the way of an application (e.g. when the jurisdiction of the Tribunal is compulsory or is based on declarations under article 287) or of the notification of a special agreement.

E. Official languages

The official languages of the Tribunal are English and French. Parties may file pleadings or make statements in one of these languages. If they want to use another language, a translation in one of the official languages, certified as accurate, has to be attached to the document. At the hearing, statements made in another language have to be interpreted in one of the official languages at the cost of the party concerned.

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[1] *Chamber for Marine Environment Disputes, Chamber for Fisheries Disputes, Chamber for Maritime Delimitation Disputes, and Chamber of Summary Procedure*.

5. Judicial work of the Tribunal

Since 1997, 18 cases have been submitted to the Tribunal.

There are two pending cases:

Case no. 16

Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal – Time Limits for the submission of the Memorial of Bangladesh and the Counter-Memorial of Myanmar, had been set at 1 July 2010 and 1 December 2010, respectively. Time Limits have also been determined for the filing of a reply and a rejoinder, if considered necessary by the Tribunal and these are on 15 March 2011, and 1 July 2011, respectively.

Case no. 18

The M/V "Louisa" Case (Saint Vincent and the Grenadines v. *Kingdom of Spain)*

By Order 2011/01 of 12 January 2011, the President, taking into account the agreement of the parties, fixed 11 May 2011 as the time-limit for the submission of the Memorial by Saint Vincent and the Grenadines and 11 October 2011 as the time-limit for the submission of the Counter-Memorial by Spain.

Prompt Release of Vessels

- *M/V Saiga* - Saint Vincent and the Grenadines *v.* Guinea, Judgment 04.12.97
- *Camouco* - Panama *v*. France, Judgment 07.02.00
- *Monte Confurco* - Seychelles *v.* France, Judgment 18.12.00
- *Grand Prince* - Belize *v.* France, Judgment 20.04.01

Tribunal ruled that jurisdiction was lacking. - Evidence was lacking to show that Belize was flag State of vessel when the application was made.

- *Chaisiree Refeer 2* - Panama *v.* Yemen, Proceedings were discontinued (July 2001)
- *The Volga* - Russian Federation *v.* Australia, Judgment 23.12.02
- *Juno Trader* - Saint Vincent and the Grenadines v. Guinea-Bissau, Judgment 18.12.04
- The *"Hoshinmaru"* Case - *Japan* v. *Russian Federation,* Judgment 06.08.07
- The *"Tomimaru"* Case - *Japan* v. *Russian Federation*, Judgment 06.08.07

Factors in determining a reasonable bond– gravity of alleged offences, possible penalties, value of vessel and cargo

Provisional measures

- *Southern Bluefin Tuna Cases (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures (Case nos. 3 and 4)*
- *The MOX Plant Case (Ireland* v. *United Kingdom), Provisional Measures*
- *Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures*

Cases on the merits

- *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines* v. *Guinea)*
- *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community) - discontinued by agreement of Parties and removed from the List of Cases*

6. Internship and capacity-building programmes

In order to disseminate information concerning the law of the dispute settlement system, the Tribunal has organized regional workshops. The Registry of the Tribunal also implements an internship programme as well as the Training and Capacity-

building programme on Dispute Settlement. The Training Programme is funded by the Nippon Foundation.

7. Concluding comments

On the basis of the experience gained so far, a few comments may be made.

- The cases that had come before the Tribunal had involved States from different regions, many of these States indeed came from this region.
- The Tribunal has the reputation of dealing with the urgent proceedings in a timely and efficient manner. Urgent proceedings are in practice completed within a period of one month. Cases on the merits have also been dealt with in a reasonably efficient manner. The Saiga Case, for example, was completed in 15 months.
- Lastly, it has also been noted by some commentators that the Tribunal had already made a contribution to the law of the sea. Among the issues which called for a decision by the Tribunal were the following: the issue of the genuine link between a flag State and the vessel that flies its flag (questions addressed in *SAIGA (*No. 2*)* Case), and the importance of the duty to cooperate (the *MOX Plant Case* and the *Case concerning land reclamation activities in and around the Straits of Johor.* Recently, the Seabed Disputes Chamber in its first Advisory Opinion declared that the precautionary principle or approach is an integral part of the due diligence obligation of a State sponsoring an entity undertaking mining activities in the Area.