

International Seabed Authority

Judge Vladimir Golitsyn
President of the Seabed Disputes Chamber
International Tribunal for the Law of the Sea

Mr. Secretary-General,
Ladies and Gentlemen,

On behalf of the International Tribunal for the Law of the Sea, I wish to congratulate the International Seabed Authority on its 20th anniversary and on the remarkable achievements that it has made in those 20 years. I convey to you, Mr. Secretary-General, in particular the greetings of the President of the Tribunal, Judge Shunji Yanai, who regrets that he is prevented from participating in today's celebration and who has given me the honour to represent him here.

Ladies and Gentlemen,

The relationship between the Authority and the Tribunal is a very special one and it is rooted in the history of modern law of the sea. At the Third Law of the Sea Conference, where the United Nations Convention on the Law of the Sea was negotiated, it was the initial idea to establish a tribunal for the sea-bed as an organ of the Authority. Of course, the consequence would have been to create two new tribunals, one dealing with general disputes concerning the Law of the Sea and the other dealing with disputes relating to the deep seabed.

We all know that, in the end, a decision was made in favour of a single, unified International Tribunal for the Law of the Sea which includes in accordance with the Convention a special dispute settlement mechanism to deal with disputes concerning seabed related activities, the Seabed Disputes Chamber.

Following their establishment the International Seabed Authority and the International Tribunal for the Law of the Sea have established a fruitful cooperation. Regular exchanges take place between the Secretary-General of the Authority and the President and the Judges of the Tribunal. Equally, the Secretariat of the Authority and the Registry of the Tribunal cooperate on a regular basis for mutual benefit. Currently, it is also planned to organize a joint regional workshop in Ghana later this year to disseminate information on the work of both the Authority and the Tribunal to government officials from the region of West Africa.

As the Seabed Disputes Chamber plays a special role in the context of activities of the Authority, in my presentation, I will briefly explain its jurisdiction and then will give an overview of the Chamber's decision in its first case, the Request for an Advisory Opinion on "Responsibilities and Obligations of the States Sponsoring Persons and Entities with respect to Activities in the Area".

Ladies and Gentlemen,

Let me first address the issue of jurisdiction of the Seabed Disputes Chamber. The Chamber has jurisdiction both over contentious cases and over requests for advisory opinions. Both are highly relevant for the activities of the Authority.

The contentious jurisdiction of the Chamber *ratione personae* is not restricted to disputes between States as this is the case in traditional international dispute settlement. The Chamber is also open to other entities, most noteworthy to the Authority and the Enterprise, *i.e.* the Authority's "operative arm".

Ratione materiae, the Chamber has jurisdiction in disputes “with respect to activities in the Area” that fall within a number of categories specified in article 187 of the Convention. Besides disputes between States Parties concerning the interpretation or application of the Convention’s regime for the deep sea bed, the Chamber can, in particular, adjudicate disputes between a State Party and the Authority. Those disputes can concern acts or omissions of the Authority or of the State Party alleged to be in violation of the Convention, of its Annexes or of rules, regulations and procedures adopted the Authority. A State Party can also challenge, before the Seabed Disputes Chamber, an act of the Authority which it deems flawed owing to a lack of competence or misuse of powers.

Contractual disputes between the parties to a contract, involving the Authority and the Enterprise as well as States Parties, state enterprises and natural or juridical persons may also be referred to the Chamber. Such disputes may concern the interpretation or application of a relevant contract or a plan of work; or acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests.

It is worthy to note that, while the Chamber has a broad and comprehensive jurisdiction, this jurisdiction is at the same time limited in order to protect the necessary discretion of the Authority in conducting its activities. According to article 189 of the Convention, the Chamber shall have no jurisdiction with regard to the exercise by the Authority of its discretionary powers and in no case shall the Chamber substitute its discretion for that of the Authority. Equally, in exercising its contentious jurisdiction, the Chamber shall not pronounce itself on the question of whether any rules, regulations and procedures of the Authority are in conformity with the Convention, nor declare invalid any such rules, regulations and procedures.

Rather article 189 stipulates that the Chamber's jurisdiction in this regard shall be confined to deciding specific claims. Those include claims that the application of any rules, regulations and procedures of the Authority in individual cases would be in conflict with the contractual obligations of the parties to the dispute or their obligations under the Convention. This also extends to claims concerning excess of jurisdiction or misuse of power. And finally this includes claims for damages to be paid or other remedy to be given to the party concerned for the failure of the other party to comply with its contractual obligations or its obligations under the Convention.

Ladies and Gentlemen,

The Chamber's jurisdiction is of course not restricted to contentious cases but the Chamber can also entertain requests for an advisory opinion. In this respect it plays a special role providing the necessary assistance to the activities of the Authority.

According to article 191 of the Convention, the Chamber shall give advisory opinions at the request of the Assembly or the Council of the Authority on legal questions arising within the scope of their activities. In its advisory opinion, which I mentioned earlier, the Chamber has emphasized that by answering such questions it will "assist [the organs] of the Authority in the performance of [their] activities and contribute to the implementation of the Convention's regime."

In addition, pursuant to article 159, paragraph 10 of the Convention, the Assembly of the Authority may request an advisory opinion on whether a proposal on a particular question, which is submitted to the Assembly, is conform to the Convention. In such case, the Assembly shall defer voting on that proposal pending receipt of the advisory opinion of the Chamber. Thus, the Chamber has the opportunity to decide whether certain rules, regulations and procedures of the Authority are in conformity with the

Convention before their adoption by the Assembly. In such a case, the Chamber's advisory opinion serves "to assist the Authority during its decision-making process".¹

In the exercise of its advisory jurisdiction, the Chamber sees itself as "part of the system in which the Authority's organs operate, but its task within this system is to act as an independent and impartial body".² The "underlying reason" for the advisory jurisdiction is that, "[i]n order to exercise its functions properly in accordance with the Convention, the Authority may require assistance of an independent and impartial judicial body."³

Ladies and Gentlemen,

As you are surely aware and as I mentioned earlier, the advisory function of the Seabed Disputes Chamber was activated by a request from the Council of the Authority.

On 6 May 2010, the Council requested the Chamber to render an advisory opinion on three questions relating to the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area. In brief, those questions were asking: What are the legal responsibilities and obligations of States Parties to the Convention with respect to the sponsorship of activities in the Area? What is the extent of liability of a State Party for any failure to comply with the applicable law by an entity whom the State Party has sponsored? And finally, what are the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility under the applicable law?

On 1 February 2011, the Seabed Disputes Chamber delivered its Advisory Opinion in which it replied to those three questions.

¹ Advisory Opinion, paragraph 27.

² Advisory Opinion, paragraph 26.

³ Advisory Opinion, paragraph 26.

The Chamber found that States sponsoring activities in the Area have two kinds of obligations:⁴ The first kind is “the obligation (responsibility) of the sponsoring State [...] ‘to ensure’ that the ‘activities in the Area’ conducted by the sponsored contractor are ‘in conformity’ or ‘in compliance’” with the applicable law.⁵ The Chamber qualified this as an obligation of “due diligence” which requires the sponsoring State to take measures within its legal system consisting of laws and regulations and administrative measures. Those measures must also be “reasonably appropriate”.⁶

The second kind of obligation identified by the Chamber are “direct” obligations, namely, those which sponsoring States have to comply “independently of their obligation to ensure a certain behaviour by the sponsored contractor”.⁷ Such direct obligations include the requirement to assist the Authority in ensuring that contractors comply with the applicable law, that they conduct environmental impact assessments and that they apply a precautionary approach as reflected in Principle 15 of the Rio Declaration and defined in the Regulations adopted by the Authority.

As regards the extent of liability of a State Party in case an entity whom it has sponsored fails to comply with the applicable law, the Chamber declared that “liability arises from the failure of the sponsoring State to carry out its own responsibilities” and that “[t]he sponsoring State is not, however, liable for the failure of the sponsored contractor to meet its obligations”.⁸ In the view of the Chamber, this also rules out the application of a standard of liability based on strict liability, i.e. liability without fault.⁹

⁴ Advisory Opinion, paragraphs 99-120 and 121-140.

⁵ Advisory Opinion, paragraph 103.

⁶ Advisory Opinion, paragraph 120.

⁷ Advisory Opinion, paragraph 121.

⁸ Advisory Opinion, paragraph 172.

⁹ Advisory Opinion, paragraph 189.

The sponsoring State can be absolved from its liability, except as regards liability for failure to carry out its direct obligations.¹⁰ This requires, however, that the State has taken “all necessary and appropriate measures to secure effective compliance” by the sponsored contractor with its obligations.¹¹

In order to fulfil its responsibility, a sponsoring State must adopt, within its legal system, laws and regulations and take administrative measures, providing for instance for “the establishment of enforcement mechanisms for active supervision of the activities of the sponsored contractor”.¹² The laws, regulations and administrative measures “should be in force at all times that a contract with the Authority is in force”.¹³

The Chamber “left [it] to the discretion of the sponsoring State” to determine the measures to be taken by it “within the framework of its legal system”.¹⁴ It clarified however that this discretion is not absolute as the sponsoring State “must take into account, objectively, the relevant options in a manner that is reasonable, relevant and conducive to the benefit of mankind as a whole” and “[i]t must act in good faith”.¹⁵

Ladies and Gentlemen,

The system created by the Convention to achieve a consistent interpretation and application of the legal regime pertaining to the deep seabed has proven to be functional and successful. The Authority is the key player in this system and, through its advisory jurisdiction, the Chamber can assist the Authority in the discharge of its responsibilities.

¹⁰ Advisory Opinion, paragraph 207.

¹¹ Advisory Opinion, paragraph 186.

¹² Advisory Opinion, paragraph 218.

¹³ Advisory Opinion, paragraph 219.

¹⁴ Advisory Opinion, paragraph 229.

¹⁵ Advisory Opinion, paragraph 230.

With the increasing activities of the Authority in recent years, further need for advice from the Chamber might arise. It is also to be expected, that as exploration, and ultimately exploitation, of the resources of the deep seabed will advance contentious cases might arise requiring adjudication by the Chamber. I can assure you that the Chamber stands ready to act as an independent and impartial judicial body to meet its responsibilities in this regard.

In concluding I wish to reiterate my congratulations to the Authority upon its anniversary and also to you, Mr. Secretary-General. Under your able leadership, the Authority has indeed come of age and has taken a remarkable development continuously increasing its activities. I wish you and the Authority the best of luck for the coming years.

Thank you for your attention.