

**Special commemorative session of the
Assembly of the International Seabed Authority,
convened to celebrate the Twenty-fifth anniversary of the entry into force of
the United Nations Convention on the Law of the Sea and the establishment of
the International Seabed Authority**

**25 July 2019
Kingston, Jamaica**

**Address by
H.E. Judge Jin-Hyun Paik,
President,
International Tribunal for the Law of the Sea**

Most Honourable Prime Minister Andrew Holness,
Madam President,
Mr Secretary-General,
Excellencies,
Distinguished delegates,

1. It is an honour for me to convey today to the International Seabed Authority the congratulations of the International Tribunal for the Law of the Sea upon the Authority's twenty-fifth anniversary and for the outstanding achievements it has accomplished during the past 25 years. Thanks to the dedication and hard work of many of you gathered here and that of your predecessors, the Authority has made remarkable progress since its establishment and is truly a thriving institution today. I also want to express my gratitude to the Government of Jamaica for its warm hospitality and excellent organization of this commemoration event.

2. Let me highlight, on this occasion, that the Authority and the Tribunal enjoy an excellent relationship and equally excellent cooperation that is inspired by the important functions both institutions are entrusted with by the United Nations Convention on the Law of the Sea ("the Convention"). Of course, the principal link between the Authority and the Tribunal is the Tribunal's Seabed Disputes Chamber.

3. This link has historical roots that date back to the early days of the Third United Nations Conference on the Law of the Sea. The initial idea discussed at the conference was to establish a tribunal dealing with disputes related to the deep seabed as an organ of the Authority.¹ Later, it was decided to include the settlement of those disputes among the responsibilities of the International Tribunal for the Law of the Sea. Those early ideas are still reflected in the Tribunal's organization today.

4. Thus, the Convention assigns exclusive jurisdiction over several categories of disputes with respect to activities in the Area to a specialized chamber within the Tribunal – the Seabed Disputes Chamber. Its 11 members are selected from among

¹ Adede, A.O. *The System for Settlement of Disputes under the United Nations Convention on the Law of the Sea: A Drafting History and a Commentary*. Dordrecht: Martinus Nijhoff Publishers. 1987. p. 137.

the members of the Tribunal with a view to assuring “the representation of the principal legal systems of the world and equitable geographical distribution”.² However, the jurisdiction of the Seabed Disputes Chamber exists separately from that of the Tribunal. For this reason, the Seabed Disputes Chamber, which also has its own President, is often referred to as a “tribunal within the Tribunal”.

Madam President,

5. As you may know, the Seabed Disputes Chamber has contentious and advisory jurisdiction. Its advisory jurisdiction was activated for the first time when, in May 2010, the Council of the Authority decided to submit to the Chamber a request for an advisory opinion on the “Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area”. This request was made pursuant to article 191 of the Convention, which provides that 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.

6. The Chamber issued its Advisory Opinion on 1 February 2011, less than nine months after the submission of the Request. There is not sufficient time today to delve into the substantive findings of that opinion. However, you would agree with me that it has made an important contribution to the work of the Authority. And this is also what the Chamber considers to be its role. In the Advisory Opinion, the Chamber emphasized that it will “assist [the organs] of the Authority in the performance of [their] activities and contribute to the implementation of the Convention’s regime.”³ 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”.⁴

7. Unlike its advisory jurisdiction, the Chamber’s jurisdiction over contentious cases has not yet been put into practice. However, this part of the Chamber’s competence has considerable potential that will be unlocked in particular when exploitation of the resources of the Area begins.

8. The Chamber’s contentious jurisdiction is set out in article 187 of the Convention. While it includes disputes between States parties concerning the interpretation or application of the Convention’s regime for the deep seabed,⁵ such jurisdiction is by no means limited to inter-State dispute settlement. The Chamber may also adjudicate disputes between a State party and the Authority or between the Authority and natural or juridical persons, such as contractors of the Authority.⁶ The subject matter of the disputes may concern “the interpretation or application of a relevant contract or a plan of work” as well as “claims for damages to be paid or

² Statute, article 35, paragraph 2.

³ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10, para. 30.

⁴ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10, para. 26.

⁵ Convention, article 187(a).

⁶ Convention, article 187(b) and (c).

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”.⁷

9. When dealing with a contentious case, the Chamber will apply the framework of procedural rules established by the Tribunal. These rules are aimed at ensuring that the proceedings are “as expeditious and cost-effective as possible”.⁸ In fact, the Rules of the Tribunal state explicitly that proceedings “shall be conducted without unnecessary delay or expense”.⁹

10. This principle entails concrete consequences. For disputes between States parties or between States parties and the Authority, the procedure to be applied by the Chamber is the same as in contentious cases before the Tribunal.¹⁰ However, nothing would prevent the Chamber from fixing shorter time-limits for the filing of written pleadings or for the opening of the hearing after the closure of the written proceedings if it deems this appropriate in light of the circumstances of the case.¹¹

11. Disputes involving State enterprises or natural or legal persons, such as a contractor of the Authority, are governed by an even more expeditious procedure, in particular as regards the submission of written pleadings.¹² In proceedings instituted by application, the application is, in principle, the only written pleading of the applicant.¹³ The respondent may lodge a defence against the application within two months after service of the application.¹⁴ In proceedings instituted by notification of a special agreement, the statements of both parties are to be included in the notification and therefore the written pleadings are considered filed at the time of the institution of the proceedings.¹⁵ Both in proceedings instituted by application and those instituted by the notification of a special agreement, no further written pleadings are necessary.

12. In short, it can safely be said that the Seabed Disputes Chamber provides, to States parties, to the Authority as well as to private and public entities, efficient and expeditious procedures for the settlement of disputes that may arise from activities in the Area. The members of the Chamber are highly qualified and experienced judges of the Tribunal who represent the principal legal systems of the world and who will competently address the disputes submitted to it. The Chamber’s procedural rules also ensure that cases are handled swiftly and decisions are rendered without unnecessary delay.

Madam President,

⁷ Convention, article 187(b)(i) and article 189.

⁸ See Treves, “The Rules of the International Tribunal for the Law of Sea”, in: Rao/Khan (eds.), *The International Tribunal for the Law of the Sea. Law and Practice*, 2001, pp. 135-159, at p. 136.

⁹ Rules, article 49.

¹⁰ Rules, article 115.

¹¹ Rules, article 59, paragraph 1; article 69, paragraph 1.

¹² See Rao/Gautier, *The International Tribunal for the Law of the Sea. Law, Practice and Procedure*, 2018, p. 257, at 4.269.

¹³ Rules, article 117, subparagraphs (f) to (h).

¹⁴ Rules, article 118, paragraph 2

¹⁵ Rules, article 120, paragraph 1, subparagraphs (b) to (d)

13. Let me conclude by reiterating the congratulations to the Authority that I expressed at the beginning of my statement. On behalf of the Tribunal, I wish the Authority all the best for the successful continuation of the journey that it embarked upon 25 years ago. The Tribunal's Seabed Disputes Chamber stands ready to play its part, as an independent and impartial judicial body, in the implementation of one of the most profound ideas of the Convention, the common heritage of mankind, and in the further development of the legal regime governing the Area and its resources.

Thank you very much.