



UNITED NATIONS OFFICE OF LEGAL AFFAIRS

Side event Choice of procedure under article 287 of the United Nations Convention on the Law of the Sea

Remarks

by

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Excellencies,

Ladies and gentlemen,

It is a pleasure to welcome you to this side event organized by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs, to provide information related to the choice of procedure under article 287 of the United Nations Convention on the Law of the Sea.

I wish to recall that the General Assembly, in paragraph 58 of resolution 71/257 on “Oceans and the law of the sea”, encouraged States Parties to the Convention that have not yet done so to consider making a written declaration, choosing from the means set out in article 287 of the Convention for the settlement of disputes concerning the interpretation or application of the Convention and the Part XI Agreement, bearing in mind the comprehensive character of the dispute settlement mechanism provided for in Part XV of the Convention.

The objective of today’s side event is to assist States in implementing this paragraph of the resolution. To that end, we are joined today by eminent speakers who will, following this brief introduction, offer an overview of the mechanisms for the settlement of disputes concerning the interpretation or application of the Convention referred to in article 287. They are H.E. Judge Ronny Abraham, President of the International Court of Justice, Mr. Philippe Gautier, Registrar of the International Tribunal for the Law of the Sea, and Mr. Dirk Pulkowski, Senior Legal Counsel at



the Permanent Court of Arbitration. Following their interventions, Mr. Santiago Villalpando, Chief of the Treaty Section of the Office of Legal Affairs, will describe the modalities for making the choice of procedure under article 287.

Before giving them the floor, allow me to briefly recall one of the distinct features of UNCLOS, namely its provision for compulsory procedures for the settlement of disputes entailing binding decisions.

Under Part XV, any dispute concerning the interpretation or application of UNCLOS, where no settlement has been reached by recourse to other peaceful means of settling disputes, must be submitted at the request of any party to the dispute to a court or tribunal.

For this purpose, UNCLOS provides a number of alternatives from which States Parties can choose. Those are set out in article 287, which is the object of our side event today. Article 287 provides that when signing, ratifying or acceding to the Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of UNCLOS:

- the International Tribunal for the Law of the Sea;
- the International Court of Justice;
- an arbitral tribunal constituted in accordance with Annex VII to UNCLOS;
- a special arbitral tribunal constituted in accordance with Annex VIII to UNCLOS for one or more of the categories of disputes specified therein – these are disputes relating to fisheries, the protection and preservation of the marine environment, marine scientific research and navigation, including pollution from vessels and by dumping.

In accordance with article 287, if the parties to a dispute have accepted the same procedure, it may be submitted only to that procedure, unless the parties otherwise agree. However, if the parties have not accepted the same procedure, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree. If a State Party is a party to a dispute not covered by a declaration in force, it shall be deemed to have accepted arbitration in accordance with Annex VII to the Convention.

Notably, a declaration does not affect or is not affected by the obligation of a State Party to accept the jurisdiction of the Seabed Disputes Chamber of the International



Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI of the Convention.

It is also important to note that if a State decides to change its choice of procedure by means of a new written declaration or a revocation, this does not affect proceedings pending before any of the aforementioned court or tribunals, unless the parties otherwise agree. In fact, the initial declaration remains in force until three months after the notice of revocation or a new declaration has been deposited with the Secretary-General of the United Nations.

With this background in mind, and without further due, let us now turn to the first segment of this side event concerning the means for the settlement of disputes under article 287 of UNCLOS, where we will hear successive overviews of the International Court of Justice, the International Tribunal for the Law of the Sea and arbitration.

President Abraham, you have the floor.

[...]

I would like to thank President Abraham for his presentation.

Mr. Gautier, you have the floor.

[...]

I would like to thank Mr. Gautier for his presentation.

Finally, turning to the arbitral aspect, while arbitration can take place outside the context of the Permanent Court of Arbitration, the PCA has administered most of the UNCLOS Annex VII arbitrations to date. It is therefore fitting that our final speaker in this segment is Mr. Pulkowski of the PCA.

Mr. Pulkowski, you have the floor.

[...]

I would like to thank Mr. Pulkowski for his presentation.



These comprehensive presentations have provided extremely useful information to delegations who consider making a choice of procedure under article 287.

We will now turn to the second segment of this side event and hear from Mr. Santiago Villalpando, Chief of the Treaty Section of the Office of Legal Affairs, concerning the modalities for making the choice of procedure.

Mr. Villalpando, you have the floor.

[...]

Thank you, Mr. Villalpando, for setting out the steps to be undertaken when making a choice of procedure under article 287.

We have now come to the question and answer session of this side event. I shall now open the floor for questions.