LEGAL ORDER IN THE WORLD’S OCEANS: UN Convention on the Law of the Sea

40th Annual Conference of the Center for Oceans Law and Policy
in Cooperation with the Division for Ocean Affairs and the Law of the Sea and the Office of Legal Affairs of the United Nations


PANEL 3: THE INTERNATIONAL TRIBUNAL ON THE LAW OF THE SEA

The Seabed Disputes Chamber:
Moving forward

Prof. Dr. Frida M. Armas-Pfirter
SEABED DISPUTES CHAMBER

★ 11 MEMBERS

★ REPRESENTATION OF THE PRINCIPAL LEGAL SYSTEMS OF THE WORLD

★ EQUITABLE GEOGRAPHICAL DISTRIBUTION

★ THE AUTHORITY’S ASSEMBLY HAS THE POWER TO ADOPT RECOMMENDATIONS OF A GENERAL NATURE RELATING TO SUCH REPRESENTATION AND DISTRIBUTION
RATIONE PERSONAE JURISDICTION

- State Parties
- The International Seabed Authority
- The Enterprise
- State enterprises
- Natural or juridical persons
Art. 187: the Chamber shall have jurisdiction in “disputes with respect to activities in the Area.”

ACTIVITIES IN THE AREA:

★ Art. 1 (1) (3) of UNCLOS

★ Definition of the Chamber in the Advisory Opinion of 2011
CONTERWEIGHT:

★ When the natural or juridical person is a Party →

SPONSORING STATE → shall be given notice
and have the right to participate in the proceedings

★ When the natural or juridical person is AGAINST a State:

✓ The respondent State may request the sponsoring State to appear in the proceedings on behalf of that person

✓ The respondent State may be represented by a juridical person of its nationality
CATEGORIES OF DISPUTES

★ DISPUTES BETWEEN STATE PARTIES

★ DISPUTES BETWEEN A STATE PARTY AND ISA

★ DISPUTES BETWEEN ANY OF THE PARTIES

★ OTHER DISPUTES SPECIFICALLY PROVIDED IN UNCLOS
CATEGORIES OF DISPUTES

★ DISPUTES BETWEEN STATE PARTIES

★ DISPUTES BETWEEN A STATE PARTY AND ISA

★ DISPUTES BETWEEN ANY OF THE PARTIES

★ OTHER DISPUTES SPECIFICALLY PROVIDED IN UNCLOS
DISPUTES BETWEEN STATE PARTIES

★ Concerning the interpretation or application of Part XI of UNCLOS

★ NOT EXCLUSIVE, may be referred to:

- an ad hoc chamber of SDC, at the request of either State Party
- a special chamber of ITLOS, upon the request of ALL State Parties
CATEGORIES OF DISPUTES

★ DISPUTES BETWEEN STATE PARTIES

★ DISPUTES BETWEEN A STATE PARTY AND ISA

★ DISPUTES BETWEEN ANY OF THE PARTIES

★ OTHER DISPUTES SPECIFICALLY PROVIDED IN UNCLOS
DISPUTES BETWEEN STATE PARTY AND ISA

★ State Party’s acts or omissions that are in violation of Part XI, rules and regulations

★ ISA’s acts or omissions that are in violation of Part XI, rules and regulations

★ ISA’s acts in excess of jurisdiction or misuse of power

◆ LIMITATIONS
LIMITATION WITH REGARD TO DECISIONS OF THE AUTHORITY

The Seabed Disputes Chamber:

★ Lacks jurisdiction with regard to discretionary powers of ISA

★ Shall not substitute its discretion for that of the Authority

★ Cannot invalidate the rules, regulations and procedures

★ Cannot decide whether they are in conformity with the Convention or not
CATEGORIES OF DISPUTES

★ DISPUTES BETWEEN STATE PARTIES

★ DISPUTES BETWEEN A STATE PARTY AND ISA

★ DISPUTES BETWEEN ANY OF THE PARTIES

★ OTHER DISPUTES SPECIFICALLY PROVIDED IN UNCLOS
DISPUTES WITH ANY PARTY

★ Parties to a contract concerning the interpretation or application of a contract or plan of work: NOT EXCLUSIVE binding commercial arbitration

★ Parties to a contract concerning acts or omissions directed to the other Party directly affecting its interests

★ ISA and a prospective contractor

★ Liability of ISA
CATEGORIES OF DISPUTES

★ DISPUTES BETWEEN STATE PARTIES

★ DISPUTES BETWEEN A STATE PARTY AND ISA

★ DISPUTES BETWEEN ANY OF THE PARTIES

★ OTHER DISPUTES SPECIFICALLY PROVIDED IN UNCLOS
ADVISORY JURISDICTION

★ The SDC shall give advisory opinions at the request of the Assembly or the Council on legal questions arising from the scope of their activities.

★ Assembly: on the conformity with UNCLOS of a proposal before the Assembly on any matter.

It shall defer voting on that proposal pending receipt the advisory opinion.
ISSUES CURRENTLY UNDER CONSIDERATION BY ISA THAT MIGHT REQUIRE THE SDC’s INVOLVEMENT

- New contracts and extensions
- Review process of art. 154
- Marine scientific research
- The Enterprise
- Regulations for exploitation
- Monopolization – abuse of dominant position
- Regulations for exploitation
- National legislation
NEW CONTRACTS and EXTENSIONS

★ 26 CONTRACTS FOR EXPLORATION:
  ★ 16 Nodules
  ★ 6 Polymetallic Sulphides
  ★ 4 Crusts

★ 2016: 6 extensions approved
REVIEW PROCESS

The Assembly of the Authority decided to undertake, pursuant to article 154 of the Convention, a general and systematic review of the manner in which the international regime of the Area has operated in practice
MARINE SCIENTIFIC RESEARCH

★ Potential conflicts between contractors and marine scientific research on exploration or exploitation areas

★ Possibility of requesting an advisory opinion to the SDC on the clarification of the interaction between exploration/exploitation and MSR
LEGAL AND TECHNICAL COMMISSION

★ Operation of the Enterprise
★ Terms and conditions of a future joint venture
★ Monopolization
★ Abuse of dominant position
CONCLUSIONS