



OPEN MEETING OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

**“The relevance and importance of the work of the Commission
to the International Seabed Authority”**

United Nations, New York

10 March 2017

STATEMENT

BY

HIS EXCELLENCY MR. MICHAEL W. LODGE
SECRETARY-GENERAL, INTERNATIONAL SEABED AUTHORITY

.....

Let me begin by adding my voice to the others that have congratulated the Commission on its twentieth birthday. As the last of the three institutional bodies under the Convention to reach this milestone, you are our younger sister. We have a special responsibility, therefore, as your older brother, to guide you and to protect you.

I’ve been asked to talk about the relevance and importance of the work of the Commission to the International Seabed Authority. Let me begin by saying it is both highly relevant and extremely important.

Under the Convention, both the Commission and the Authority have very specific and narrowly defined mandates and responsibilities. These must be carefully understood and respected in order for the overall scheme of the Convention to work properly. The Commission is tasked to consider data and information submitted by coastal States and to make recommendations in accordance with Article 76 relating to the outer limits of the continental shelf. The Authority is the organization through which States Parties shall organize and control activities in the Area.

The relationship between the Area and the continental shelf is complex. Whereas the Convention defines the maritime zones pertaining to the national jurisdiction of coastal States by reference to objective criteria, such as baselines, or in the case of the continental shelf, by reference to criteria set out in Article 76, it defines the extent of the Area only by reference to what it is not. Thus the Area is simply defined as the seabed and subsoil thereof beyond the limits of national jurisdiction. Its

geographical boundaries are still fluid and furthermore they are residual in nature to the maritime zones under national jurisdiction. Article 134(4) of the Convention, which deals with the scope of Part XI, illustrates this point; providing that nothing in that article affects the establishment of the outer limits of the continental shelf in accordance with Part VI. This means that the only way we can accurately delineate the boundary of the Area is by first knowing the limits of national jurisdiction.

In the case of the Exclusive Economic Zone, this is relatively straightforward, at least in the case of those States parties to the Convention that have already declared their maritime zones. In the case of the continental shelf, however, the situation is more complex, especially in the case of those States having continental shelves extending beyond 200 nautical miles. As we know, relatively few of these States have yet established the limits of their continental shelves. More pertinently, as of today, only seven States Parties have fulfilled their obligation under Article 84(2) to deposit charts or lists of geographical coordinates showing the outer limit lines of the continental shelf with the Secretary-General of the Authority. These are: Australia, France, Ireland, Mexico, Niue, Pakistan and Philippines. Whilst there are obviously very good reasons why many States have not been able to finalize the outer limits of their continental shelf, the fact remains that, more than 20 years since the Convention entered into force, nobody can define the boundary between national jurisdiction and the Area. This is a very unsatisfactory situation. It makes it more difficult for States Parties, acting through the Authority, to organize and control activities in the Area. Moreover, it creates uncertainty in the law of the sea, which was never the intention of the Convention.

There is no immediately obvious way of resolving this situation in the short term. All the Authority can do is rely on States to fulfil their obligations under Article 84(2). But this can only happen once their submissions have been considered by the Commission and final and binding limits have been established by coastal States. In cases where there are disputes between States, this may be delayed for an indefinite period.

This situation could give rise to a number of problems. Some of these may be academic, but other scenarios are more realistic. As the years go by the likelihood that such problems may arise will increase as scientific knowledge increases and the presence of hard mineral resources in areas immediately adjacent to the boundaries between the Area and the continental shelf becomes known.

Let me give you an example.

What happens if the Authority receives an application for a plan of work for exploration in an area that may be covered by a pending submission to or before the Commission?

One scenario of course is that the applicant may adjust its application accordingly. In this case, there is no problem.

But what if the applicant does not wish to make any adjustment, which may indicate that it disputes the coastal State submission?

What is the Authority to do?

The Convention is silent on this matter. Could Article 134 (4) of the Convention provide some, albeit general, guidance? Yet, it is an open question whether any State party could challenge controversial outer continental shelf limits under the dispute settlement provisions of the Convention and the Convention provides no procedure whereby the Council of the Authority may challenge a coastal State submission on the basis that it encroaches upon the Area. Several academic commentators have suggested that the lack of any clear procedural rules is an omission in the Convention, although in my view it is a situation that is not inconsistent with the legal rights afforded to States Parties by the Convention.

On the other hand, the Convention does not provide any procedure whereby a coastal State may challenge an application for approval of a plan of work, and it is difficult in any case to see how a challenge could be made before the outer limits become final and binding. If the Authority were to approve an application it is conceivable that an aggrieved coastal State could bring a claim against the Authority in the Seabed Disputes Chamber, pursuant to Article 187(b)(ii), of the Convention, as an act in excess of jurisdiction of the Authority, but this is by no means certain. In any case, by providing a remedy to the coastal State but not to the international community as a whole, this does seem to be a very one-sided view of the provision. Is there a possibility that there could be a remedy for States Parties under Article 187(a)? The position is not at all clear.

In these circumstances, it can be seen that the role of the Commission is vitally important to the work of the Authority, even though the two bodies carry out their work in apparent isolation from one another. For example, there is nothing in the Convention that would allow for consultation between the Commission and the Authority. Not even the Rules of Procedure of the principal organs of the Authority or their subsidiary bodies provide clarity on the matter, with the sole exception of the Rules of Procedure of the Legal and Technical Commission which do allow, albeit in quite ambiguous terms, for consultations, where appropriate, with other commissions. Could that mean only those commissions within the Authority's architecture and not beyond?

Another way in which the work of the Commission is relevant to the work of the Authority arises by virtue of Article 82 of the Convention. As a *quid pro quo* for the reduction by some 30 million square kilometres of the geographical extent of the Area caused by the recognition of national jurisdiction over the continental margin beyond 200 nautical miles, Article 82 provides for a system of revenue sharing between coastal States and the international community in respect of the exploitation of non-living resources of the extended continental shelf. Coastal States will be required to share the revenues from the exploitation of non-living resources on the outer continental shelf by paying a portion of those revenues through the Authority for distribution to the international community, and particularly to the developing States, according to equitable sharing criteria.

Those equitable sharing criteria are yet to be developed and in general there is as yet no agreement as to how Article 82 should be implemented, not only by the Authority in terms of distributing any revenue, but also as concerns the coastal States; there is as yet no agreement or common understanding on how coastal States might implement Article 82. The Authority has convened a number of studies and workshops aimed at providing guidance on the interpretation and application of Article 82, but much work remains to be done.

Of course, these matters relating to the implementation of Article 82 are not the responsibility of the Commission. The point I want to make, however, is that with increased scientific knowledge, we can expect more and more discoveries of non-living resources on the outer continental shelf. When these resources are commercialized, the revenues from Article 82 will represent a significant source of economic benefit for developing countries. However, the investment decisions necessary to start

commercial exploitation of these resources will not be taken until the outer limits are established with certainty. This, of course, relies on the Commission.

A final set of issues which may arise in light of the adjacency or maritime neighbourliness – to borrow a phrase from a prominent academic – between the Area and the continental shelf, are those linked to the rights and legitimate interests of nearby coastal states. In this respect, complex interactions might arise in the implementation of Part XI and other relevant Parts of the Convention. For instance, it is not clear what would be the role of nearby coastal states in case of marine pollution contingency response and planning arising from activities in the Area, which pose a threat of a grave or imminent danger to their coastlines, or other legitimate interests connected to the exercise of the rights over their continental shelves. By no means are those rights and interests limited to environmental matters, but they are certainly amongst the most conspicuous ones. From a practical perspective, the way forward seems to be to promote international cooperation and good neighbourliness between the Authority and adjacent coastal States. However, there are no easy answers and, like the other issues I have touched upon today, much will rely on the Convention being implemented in good faith by States Parties and by the institutions created by the Convention.

The Commission for the Limits of the Continental Shelf has a critical role to play in this respect and I wish it well for the future. I also offer the utmost cooperation from the Authority.