



## INTERVIEW WITH JUDGE HELMUT TUERK

On the occasion of the event commemorating the 30th anniversary of the opening for signature of the United Nations Convention on the Law of the Sea, Judge Helmut Tuerk (Judge of the International Tribunal for the Law of the Sea) was interviewed by the editor of the IMLI e-news. We are pleased to reproduce hereunder the said interview.

***Judge Tuerk welcome to IMLI once again! The United Nations Convention on the Law of the Sea (UNCLOS) celebrated on 10 December its 30<sup>th</sup> Anniversary of the Opening for Signature. In your opinion, has the Convention fulfilled its objectives?***

I believe UNCLOS has generally fulfilled the expectations of the international community as it has laid down a comprehensive legal order for the oceans and has therefore rightly been called a “Constitution for the Oceans”. It should be borne in mind that this Convention was adopted during a unique window of opportunity which was thrust open by the daring and visionary initiative of Ambassador Arvid Pardo and the Government of Malta to declare the seabed and the ocean floor beyond the limits of national jurisdiction the “common heritage of mankind”. It seems highly doubtful whether today the conditions for elaborating such an overarching legal instrument would still exist.

***To commemorate the 30<sup>th</sup> Anniversary of the Opening for Signature of UNCLOS, IMLI and Malta’s Ministry of Foreign Affairs organized an event which you honoured by delivering a lecture entitled “The 30th Anniversary of the United Nations Convention on the Law of the Sea and the Common Heritage of Mankind”. How has the principle been developed since its incorporation in UNCLOS?***

Ambassador Pardo considered the principle of common heritage of mankind to have a much wider application than it is presently the case. First, he believed that not only the seabed but also the water column should come under what he called “International Ocean Space Institutions” and, secondly, he did not foresee that coastal States would claim sovereign rights to the resources of the entire continental margin and not only to those of the continental shelf in the sense proper. The economic viability of the common heritage of mankind has been severely truncated by excluding approximately 97 per cent of the hydrocarbon resources thought to exist on the seabed. It is worth mentioning, however, that the workload of the International Seabed Authority has in recent years dramatically increased and so far 17 contracts have been approved for exploration of

mineral resources of the deep seabed. These contracts not only refer to polymetallic nodules but also to polymetallic sulphides. The next task of the Authority will be to also adopt regulations for the exploitation of the resources of the international seabed "Area". Although it can as of now not yet be predicted when such exploitation will actually begin, it is nevertheless important that the necessary legal framework be in place.

***In your lecture you stated "The question has been asked whether a State could be found to be in violation of its obligations under the Convention on the Law of the Sea for failing to mitigate climate change." UNCLOS does not however regulate climate change? What is your opinion on the matter?***

UNCLOS, at the time of its adoption, was considered the strongest environmental treaty in existence. A whole part of the Convention, namely Part XII, is devoted to that field, establishing the general obligation of all States "to protect and preserve the marine environment". It is true that climate change was not yet an issue at the time UNCLOS was negotiated. The Convention nevertheless provides a good basis for dealing with that question at the international level at a later stage. It was once again the initiative of Malta and, in that case of Professor David Attard personally following the footsteps of Ambassador Pardo, to raise international consciousness with respect to climate change. Although in that context the term "common heritage of mankind" was changed to "common concern of humankind", one may nevertheless consider this "common concern" as an emanation of the principle of the "common heritage of mankind".

***For several years now you have served as a Judge of the International Tribunal for the Law of the Sea (ITLOS) which was established when UNCLOS entered into force, in 1994. How have you seen the Tribunal develop throughout the years and what does the future hold for it?***

When ITLOS was created there was a certain amount of criticism and skepticism that its establishment might lead to a fragmentation of international law. Experience has, however, shown that this is by no means the case. The Tribunal in adopting its decisions carefully looks at the jurisprudence of the International Court of Justice and takes this jurisprudence into account. The Court on the other hand also pays attention to the jurisprudence of the Tribunal and has referred to it in its own judgments. After a rather slow start the workload of the tribunal has lately substantially increased and there is every reason to believe that this trend will continue in the years to come.

***The subject of the law of the sea and the analysis of the provisions of UNCLOS form a core part of the IMLI syllabus. What is, in your opinion, the contribution of IMLI to the development of international maritime law?***

I consider that IMLI plays an indispensable role in the formation of young professionals in the field of the law of the sea and maritime law. This holds particularly true for talented young women and men from developing countries who are being given a unique opportunity to become experts in these areas. Many of them have risen to important positions in their home countries as well as at an international level. I myself have on a number of occasions had the opportunity to meet with IMLI graduates and to work with them and I have always been very much impressed by their profound knowledge of the law of the sea and their devotion to it.

### ***How do you see the future of UNCLOS?***

As to the effects of UNCLOS on the behaviour of States, and its future development, one may criticize that quite a number of countries are interpreting some of its provisions in a “liberal” way, to say the least, or are even going beyond them. Nevertheless, I would say that the overall record of respecting and implementing the provisions of the Convention is a good one. There are certainly new challenges and problems facing the international community which will have to be dealt with more intensely in the future. Among these problems I would mention an enhanced protection of the marine environment, climate change, illegal and unregulated fishing which is depleting the biological resources of the world’s oceans, the unresolved question of the rights to the genetic resources in areas beyond national jurisdiction and the threat of piracy and terrorism at sea. In addressing these challenges the international community should continue to proceed by way of multilateral negotiations in order to find generally acceptable solutions, and I am firmly convinced that this will be the road of the future.

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