



## JUDGE OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA LECTURES AT IMLI

His Excellency Judge José Luis Jesus (Judge of the International Tribunal for the Law of the Sea) visited the IMO International Maritime Law Institute on 6 March 2017 and delivered a lecture on Maritime Delimitation (Judicial Perspective-Bangladesh/Myanmar Judgment) to the IMLI Class of 2016 – 2017.



*Judge José Luis Jesus (Judge of the International Tribunal for the Law of the Sea) with the IMLI Class of 2016 – 2017*

Judge Jesus started his lecture with the general considerations of the Case. He gave a general description of how the case was instituted, first by Bangladesh as an Annex VII arbitration and later transferred to ITLOS jurisdiction. Myanmar made a declaration under Article 287 of the UN Convention on the Law of the Sea (UNCLOS) on 4 November 2009, accepting the jurisdiction of the tribunal to deal with the dispute. This was followed similarly by Bangladesh on 12 December

2009. The learned Judge explained that though Myanmar revoked its declaration on 14 January 2010, such a revocation had no effect on the jurisdiction of ITLOS to deal with the case due to the operation of Article 287 (6) and (7) of UNCLOS, which provides that revocation takes effect after 3 months of issue, and that revocation of declaration does not take effect where the Tribunal is already seized of the dispute. The students were informed that Case No. 16 is the first case to address the issue of the grey area, the delimitation of Continental Shelf (CS) beyond 200 miles, and to make a triple delimitation and that it took only 27 months for the Tribunal to dispose of the dispute.

On how the Tribunal decided on the delimitation of the territorial sea, Judge Jesus explained that Bangladesh requested the Tribunal to recognise the delimitation of the territorial sea made between the Parties through an Agreement in 1974 and reaffirmed in 2008, or proceed to make the delimitation itself. The Tribunal looked at whether the Parties have in fact delimited their territorial sea, either by signing the Agreed Minutes of 1974 and 2008 or by tacit agreement. It held that the Agreed Minutes could not be considered as a legally binding agreement as the head of the Burmese delegation was not an official who, in accordance with Article 7 (2) of the Vienna Convention on the Law of Treaties, could engage his country without having to produce full powers and no evidence was provided either to the contrary or to prove the existence of a tacit boundary agreement concerning the territorial sea. He described how the Tribunal, having decided on the Agreed Minutes in the negative, proceeded to delimit the territorial sea boundary in accordance with Article 15 of UNCLOS.



*(L - R) His Excellency Judge José Luis Jesus (Judge of the International Tribunal for the Law of the Sea) with Professor David Attard (Director of IMLI)*

Judge Jesus further explained how the Tribunal approached the question of delimitation of the Exclusive Economic Zone (EEZ) and the Continental Shelf (CS) amid the Parties' disagreement as to the appropriate method of delimitation. According to him, since Articles 74 (1) and 83 (1) of UNCLOS do not specify the method to be applied, the Tribunal, chose to follow the equidistance/relevant circumstances method as the most appropriate to produce an equitable result in the case. This method has been developed by international tribunals in order to reduce the elements of subjectivity and uncertainty in the determination of maritime boundaries. Judge Jesus also explained in detail how the Tribunal delimited the Continental Shelf beyond 200 miles.

Judge Jesus' lecture made simple a very complicated area of the law of the sea. For the Students, it was a rare opportunity to hear from a Judge on how the Tribunal applied international law to real issues. They have also learnt that questions bordering on maritime delimitation may have their answers in other areas of international law. Indeed, the lecture enhanced their understanding of maritime delimitation from an international judicial perspective. Shortly after his lecture, Judge Jesus granted an interview to the editor of the IMLI e-News.

On his thoughts about IMLI, the Learned Judge said that IMLI is a very useful institution as it provides training to students from around the world in a complex area which is technically important for almost every country. It seems to be the Institution in the world which is highly placed to provide that specialist training to people that are called to work in the field of maritime.

On the Question why he chose to deliver his lecture on the ITLOS Case, he affirmed that the lecture was about maritime delimitation from the perspective of a concrete case, which serves as a very good case study of a maritime delimitation of 3 areas (the Territorial Sea, the EEZ and the Continental Shelf (within 200 miles) and the Continental Shelf beyond 200 miles). To that extent, he said 'talking about this case brings not only the concrete knowledge of how to apply the law to maritime delimitation but also the theoretical approach of what students may need in respect to maritime delimitation as an area or field of knowledge.'

*From your experience in international adjudication, what are the challenges in the maritime law which IMLI need to address in its curriculum?*

In his response, Judge Jesus identified two areas: The protection of the marine environment and the conservation of the marine living resources. He said that UNCLOS does not address in detail the obligation of countries with respect to conservation. He said that fish by nature has a straddling character and even where they do not straddle, the action of one state in its own area that is adverse towards the marine environment might damage fishery resources elsewhere. He reiterated the need for international cooperation with binding legal obligations to ensure that living resources of the oceans are protected and exploited in a responsible manner in order to preserve them for the future generation. Though not familiar with IMLI's curriculum, he is sure that if students undergoing training here are taught in these two areas, their home countries stand to benefit a lot.

On the contribution of IMLI graduates to the development of maritime law in their respective countries, Judge Jesus believe that a person with the kind of training from IMLI on various subjects and issues will carry a good knowledge and background in international regulations dealing with ocean affairs and law of the sea, which, even the landlocked States have to bear them in mind. He

said that developing countries need an institution like IMLI that provides the possibility for many to acquire specific technical knowledge that is very useful to every government.

He stated that it was not by chance that IMLI was created within the context of IMO activities and for the latter to have its many treaties implemented in member States as desired, especially for developing countries it needed an institution to provide the technical training needed by the countries. To that extent, IMLI, by providing that service year after year is doing a great job.

‘What I have seen and what I know, if I were a bit younger, certainly I would like to come to IMLI for my training if I wanted to be an expert in maritime law’, he concluded.

His Excellency Judge José Luis Jesus obtained a Law Degree from the Classical University of Lisbon (1978). He obtained an International Law Certificate and a Master of Arts (M.A.) degree in Government and Politics from Saint John's University, New York (1985)

Judge Jesus has vast professional experience. He was a Delegate and Head of Cape Verde delegation to the Third United Nations Conference on the Law of the Sea (1979–1982); Sixth Committee of the United Nations General Assembly (1979–1994); Counsellor (Legal Adviser) (1981–1987), Ambassador and Deputy Permanent Representative of Cape Verde (1987–1991), Ambassador and Permanent Representative of Cape Verde to the United Nations in New York (1991–1994); Chairman, Group of 77 for the Law of the Sea (1986); Chairman, Group of African States at the United Nations (1986); Head of the Cape Verde delegation to United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, Vienna (1986); Chairman, Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (1987–1995); President, United Nations Security Council (July 1992 and November 1993); Special Envoy of the Secretary-General of the United Nations for the Great Lakes Region, Central Africa (1994); Ambassador of Cape Verde to Portugal, Spain and Israel (1994–1996); Secretary of State for Foreign Affairs and Cooperation (1996–1998); Minister of Foreign Affairs and Communities (1998–1999); Chairman, National Commission on the Delimitation of Maritime Boundaries, Cape Verde; Legal Consultant for technical assistance in the drafting of fisheries legislation, FAO; Lecturer at several seminars and conferences on the law of the sea, humanitarian law and international relations.

He is the author of numerous publications in the fields of the law of the sea and humanitarian law, extradition and procedures at ITLOS.

Judge José Luis Jesus has been a member of the International Tribunal for the Law of the Sea (ITLOS) since 1 October 1999. He was President of the Tribunal between 2008 and 2011 and he is currently the President of the Seabed Disputes Chamber.

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