



LAW OF THE SEA TRIBUNAL JUDGE LECTURES AT IMLI

Judge Helmut Tuerk, Member of the International Tribunal for the Law of the Sea (ITLOS) was recently at IMLI and delivered two lectures: "*The Contribution of the International Tribunal for the Law of the Sea to International Law*" and "*The Land-Locked States and the Law of the Sea*".



Judge Helmut Tuerk lecturing to IMLI Class 2006-2007

Judge Tuerk in his lecture on "*The Contribution of the International Tribunal for the Law of the Sea to International Law*" explained that the ITLOS is one of the four means of settling disputes entailing binding decisions which is recognized by the 1982 Convention on the International Law of the Sea. The International Tribunal for the Law of the Sea is an international judicial body established for the settlement of disputes concerning the interpretation or application of the Convention, and for rendering advisory opinions.

The Convention confers compulsory jurisdiction on the Tribunal in two instances: the first is with respect to provisional measures where a dispute on the merits has been submitted to the Tribunal, or when a dispute on the merits has been submitted to an arbitral tribunal, pending its constitution and the provisional measures are required as a matter of urgency; and the second concerns the prompt release of vessels and crews.

Another function of the Tribunal is with respect to giving advisory opinions on legal questions provided for by an international agreement which confers jurisdiction on the Tribunal. During his lecture, Judge Tuerk stated that: "*The advisory function of the Tribunal may offer an alternative to contentious proceedings, and could be*

an interesting option for States seeking a non-binding opinion on a legal question or an indication as to how a particular dispute might be resolved through direct negotiations.”

He explained the composition and membership of the Tribunal, and its rules of procedure. He stated that the jurisdiction of the Tribunal was not limited to State parties of the 1982 Law of the Sea Convention. *“The Tribunal is open to States Parties to the Convention, other States, as well as other entities, such as international organizations, and natural or legal persons in any case expressly provided for in Part XI of the Convention – regarding exploration and exploitation of the International Seabed Area – or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to the case.”*

In his lecture on *“The Land-Locked States and the Law of the Sea”*, Judge Tuerk explained the evolution of the rights of land-locked States to sea and seabed resources. Because of their peculiar geographic position, Judge Tuerk explained, *“land-locked States differ from other States in one decisive respect: as they do not border the sea, they need transit across the territory of other States in order to be able to benefit from maritime uses. The lack of a coast of their own deprives them of exclusive rights with respect to maritime areas, rights which coastal States derive from the sovereignty they enjoy over the coast.”*

He described the move taken by land-locked States and their alliance with geographically disadvantaged States in trying to forestall a complete partition of ocean resources which under customary international law were recognized as common to all States. He explained that this group supported the move of Ambassador Arvid Pardo of Malta to have the International Seabed Area declared as the common heritage of mankind.

The International Convention on the Law of the Sea, which was finally adopted in 1982, enshrined the following rights of land-locked States: the right of ships under their own flag of innocent passage through the territorial sea; the same rights as coastal States as regards the freedom of the high seas; the right of transit to and from the sea through transit States subject to bilateral, sub-regional or regional agreements; the same rights as coastal States regarding the international seabed area; and, subject to certain conditions, the right to participate in the exploitation of the living resources in the exclusive economic zones of coastal States of the same region or sub-region.

Judge Tuerk, who represented the interests of land-locked States during the Third United Nations Conference on the Law of the Sea, underlined that one of the major and lasting results of that conference was to heighten the awareness of the international community that the law of the sea is also of considerable importance to landlocked States.

Judge Tuerk concluded that under the United Nations Convention on the Law of the Sea of 1982, States have a wide choice of forum for the settlement of disputes, which has been significantly expanded by the creation of the Tribunal. Nevertheless, fragmentation of the Law of the Sea has thus far not occurred, and the Tribunal also makes every effort to keep abreast of the developments that take place in other international judicial fora.

* For further information please contact Ms. Josephine Uranza (Editor, IMLI e-News) at publications@imli.org