TENTH INTERNATIONAL CONFERENCE ON THE LAW OF THE SEA

Celebrating a Decade of Dialogue: The Expanding Role of UNCLOS and Law of the Sea Institutions

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Keynote Address by H.E. Judge Tomas Heidar,
President of the International Tribunal for the Law of the Sea

Vice-Minister of Foreign Affairs, Kim Jina,
Professor Park Byung Do,
Excellencies, distinguished guests,

It is an honour to welcome you to the tenth International Conference on the Law of the Sea, hosted by the Ministry of Foreign Affairs of the Republic of Korea and jointly organized by the Korean Society of International Law and the International Tribunal for the Law of the Sea. On behalf of the Tribunal, I wish to convey our sincere appreciation to the Ministry of Foreign Affairs and the Korean Society of International Law for their initiative in holding this event, and for fostering its development into the increasingly influential forum it is today – a forum for exchanging insights and deepening our collective understanding of the United Nations Convention on the Law of the Sea (the "Convention" or UNCLOS).

Over the past 10 years, the Conference has grown both in scope and in depth, reflecting its modernity and responsiveness to developments in the law of the sea and the evolving realities of ocean governance. Since its early focus on foundational and institutional questions, such as the implementation of the Convention and the role of its dispute settlement mechanism, the Conference has broadened its engagement to encompass a wide range of timely and emerging issues, including climate change, marine biological diversity beyond national jurisdiction and new technologies. Across this wide spectrum of inquiry, two enduring threads can be discerned: the central role of the Convention as the foundation of ocean governance, and the continuing and

steady contributions of the Tribunal in clarifying and giving practical effect to the legal principles and rules embodied therein.

This tenth anniversary offers not only a moment for commemoration but also an opportunity for reflection. Over the past decade, the landscape of ocean governance has grown more interconnected. It is therefore timely to consider how the United Nations and its specialized agencies, as well as relevant institutions established under the Convention, have advanced together and contributed to an increasingly coherent network. In this regard, the conference theme “Celebrating a Decade of Dialogue: The Expanding Role of UNCLOS and Law of the Sea Institutions” and the accompanying programme aptly capture this spirit of shared growth and collaboration.

Excellencies, distinguished guests,

Embodying this spirit of progress and cooperation, the United Nations has continued to serve as a central platform for mobilizing political will and setting global priorities. Importantly, Sustainable Development Goal 14, “Life below Water”, has provided a policy framework for the conservation and sustainable use of the oceans and marine resources, supported by three UN Ocean Conferences that have fostered renewed commitment to collective action. The UN Decade of Ocean Science for Sustainable Development has further strengthened international cooperation by promoting the generation and sharing of the scientific knowledge necessary for informed decision-making. Equally noteworthy is Action 22 of the 2024 Pact for the Future, through which States reaffirmed their determination to address threats to maritime security and safety in accordance with the Convention.

A particularly significant milestone is the Agreement under UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, or the “BBNJ Agreement”, adopted under the auspices of the United Nations. Having now met its ratification threshold, this third implementing agreement of the Convention is set to enter into force in January 2026.

In parallel, UN specialized agencies have continued to advance initiatives that align with the objectives of the Convention and strengthen and promote collective efforts towards a more cooperative and responsive approach to ocean governance. I

note, among others, the 2023 Strategy on the Reduction of Greenhouse Gas Emissions from Ships, adopted by the International Maritime Organization (IMO); the Strategy on Climate Change 2022–2031, adopted by the Food and Agriculture Organization of the United Nations (FAO); and the ongoing negotiations under the auspices of the United Nations Environment Programme (UNEP) towards an international legally binding instrument on plastic pollution, including in the marine environment.

Taken together, these efforts demonstrate the growing coherence of global ocean governance. Each initiative, whether normative or operational, is carried out within the legal framework established by the Convention, which continues to serve as the foundation for cooperation among institutions in addressing the complex and evolving challenges facing our oceans.

Excellencies, distinguished guests,

I would now like to turn to another vital aspect of the Convention, namely, its dispute settlement mechanism, and in particular, the Tribunal and its contributions over the past decade. This mechanism is central to upholding the rule of law at sea and ensuring that the Convention is applied consistently and that it remains responsive to contemporary challenges.

Since 2015, nine contentious cases[1] and one request for an advisory opinion[2] have been submitted to the Tribunal. Of the contentious cases, five concerned the merits, three involved requests for provisional measures under article 290, paragraph 5, and one related to prompt release. The Tribunal also delivered a judgment in a case that had been submitted prior to 2015.[3]

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[1] *The "Enrica Lexie" Incident, Provisional Measures (Italy* v. *India); The M/V "Norstar" Case (Panama* v. *Italy); Case concerning the detention of three Ukrainian naval vessels, Provisional Measures (Ukraine* v. *Russian Federation); The M/T "San Padre Pio", Provisional Measures (Switzerland* v. *Nigeria); Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives); The M/T "San Padre Pio" (No. 2) Case (Switzerland/Nigeria); The M/T "Heroic Idun" Case, Prompt Release (Marshall Islands* v. *Equatorial Guinea); The M/T "Heroic Idun" (No. 2) Case (Marshall Islands/Equatorial Guinea) and The "Zheng He" Case (Luxembourg* v. *Mexico).*

[2] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law.*

[3] *Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean* (Ghana/Côte d'Ivoire).

During the same period, six cases were brought before Annex VII arbitral tribunals, three of which were subsequently transferred to the Tribunal.[4] This development reflects the growing confidence that States Parties place in the Tribunal and its role within the Convention's dispute settlement regime.

The Tribunal's recent jurisprudence provides a clear illustration of its continuing authority and relevance. In the interest of time, I will briefly touch upon two cases. The first case, the *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, provided the Special Chamber of the Tribunal with a rare opportunity to elaborate on the delimitation of maritime boundaries between archipelagic States. The Special Chamber clarified several aspects of the legal regime governing such States, including the treatment of archipelagic baselines, drying reefs and low-tide elevations, as well as the question of delimitation of the continental shelf beyond 200 nm. I will come back to some of these points later.

The second case, the *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, marks another milestone in the Tribunal's jurisprudence. It was the first time an international court or tribunal examined the obligations of States under the Convention in the context of climate change. The Advisory Opinion underscored several notable aspects of the Tribunal's contribution: its close engagement with science, drawing extensively on the reports of the Intergovernmental Panel on Climate Change (IPCC); its reaffirmation of the Convention's continuing relevance in the face of climate change, including through the interpretation of the term "pollution of the marine environment" as encompassing anthropogenic greenhouse gas emissions; and its clarification of the relationship between Part XII of the Convention and other relevant treaties, such as the Paris Agreement, emphasizing that these instruments must be applied in a manner that upholds, rather than undermines, the object and purpose of the Convention.

[4] *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives); The M/T "San Padre Pio" (No. 2) Case (Switzerland/Nigeria); The M/T "Heroic Idun" (No. 2) Case (Marshall Islands/Equatorial Guinea).*

Excellencies, distinguished guests,

This brings me to the next part of my address, which concerns the linkages between the Tribunal and other institutions that work in complementary ways to advance the effective implementation of the Convention.

Given the time available, I will focus on the Tribunal's linkages with three other institutions, namely, the International Seabed Authority (ISA) and the Commission on the Limits of the Continental Shelf (CLCS), both of which were also established under the Convention, and the International Court of Justice (ICJ). My purpose is to highlight how these institutions have complemented one another in their functions in supporting *the* implementation of the Convention.

Firstly, I wish to touch upon the interconnection between the Tribunal and the ISA. The link between them has historical roots dating back to the very outset of the Third United Nations Conference on the Law of the Sea. The initial idea proposed at the Conference was to establish a tribunal as an organ of the ISA that would deal with disputes related to the deep seabed. Later, it was decided to entrust that task to a special chamber within the Tribunal. Since then, the Seabed Disputes Chamber has served as the principal institutional link between the Tribunal and the ISA.

The Convention confers both contentious and advisory jurisdiction exclusively on this Chamber. Its contentious jurisdiction is set out in article 187 of the Convention, under which the Chamber enjoys exclusive jurisdiction to adjudicate, among others, disputes between States Parties concerning the interpretation or application of the Convention's regime for the deep seabed, disputes between parties to an ISA contract concerning its interpretation or application, as well as disputes between the ISA and a prospective contractor concerning the refusal or negotiation of a contract. While this aspect of the Chamber's jurisdiction has not yet been put into practice, it holds considerable potential that may be realized as activities relating to the exploration and exploitation of the resources of the deep seabed progress. As provided for in the current draft of the Exploitation Regulations under negotiation at the ISA, "[d]isputes

concerning the interpretation or application of these Regulations and an Exploitation Contract shall be settled in accordance with section 5 of Part XI of the Convention." [5]

The Chamber's advisory jurisdiction, on the other hand, has already been exercised. In May 2010, the Council of the ISA submitted to the Chamber a request for an advisory opinion on the *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*. This request was made pursuant to article 191 of the Convention.

The Chamber delivered the Advisory Opinion on 1 February 2011, offering several key clarifications that have shaped our understanding of how sponsorship operates in the deep seabed. Among its most crucial findings was the interpretation of the "responsibility to ensure" under article 139 of the Convention. The Chamber explained that this is not an obligation to achieve a particular result but one of due diligence,[6] requiring sponsoring States to do the utmost to ensure that their sponsored contractors comply with the Convention, the 1994 Implementing Agreement and the terms of their contracts with the ISA.[7] The Chamber emphasized that due diligence is a variable concept that may evolve with advances in science, technology and understanding of the risks involved.[8]

Furthermore, the Chamber identified a second category of obligations: direct obligations. These obligations are binding on sponsoring States independently of the contractor's conduct. They include the obligation to assist the ISA in the exercise of its functions, the obligation to adopt and implement best environmental practices, the obligation to ensure access to recourse for compensation, and two obligations that the Chamber identified as potentially having, or already possessing, the status of customary international law: the obligation to apply the precautionary approach and the obligation to conduct environmental impact assessments.[9]

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[5] Revised consolidated draft of the regulations on exploitation of mineral resources in the Area, ISBA/30/C/CRP.1, Regulation 106.

[6] *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, para. 110.

[7] *Ibid.*, para. 108.

[8] *Ibid.*, para. 117.

[9] *Ibid.*, paras. 122, 131, 135 and 145.

The Chamber also made crucial findings about the issue of liability. There is not sufficient time today to delve into the details of this aspect. However, it may be helpful to note that the Chamber made clear that the liability of a sponsoring State does not arise from the conduct of the contractor but rather from the State's own failure to fulfil its responsibilities.[10]

The Advisory Opinion, which was recognized by the Secretary-General of the ISA and several members of the Council as a "milestone in the life of both the Authority and the Law of the Sea", had an immediate and substantive impact.[11] At its seventeenth session in 2011, in light of the Advisory Opinion, the Legal and Technical Commission of the ISA recommended revising the Regulations on Prospecting and Exploration for Polymetallic Nodules to strengthen environmental protection, enhance the application of the precautionary approach, and incorporate best environmental practices. In 2013, the Assembly of the ISA approved amendments to those Regulations.[12] The implications of the Advisory Opinion have remained unabated since, as demonstrated in the ISA's ongoing negotiation of the exploitation regulations where it is proposed that the precautionary approach be further strengthened and recognized as one of the guiding "principles, approaches and policies" of the instrument.[13]

In the Advisory Opinion, the Chamber stated that it will "assist [the organs] of the Authority in the performance of [their] activities and contribute to the implementation of the Convention's regime."[14] As advances are made both in the regulatory framework and in technological capacities, the Seabed Disputes Chamber is well prepared to make further contributions in this field whenever it is called upon to act by the ISA or other stakeholders.

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[10] *Ibid.*, para. 172.

[11] ISBA, Seabed Council in first substantive meeting of seventeenth session discusses recent advisory opinion, Press release SB/17/5, 14 July 2011, p. 3.

[12] Decision of the Assembly of the International Seabed Authority regarding the amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, ISBA/19/A/9, 25 July 2013.

[13] Revised consolidated draft of the regulations on exploitation of mineral resources in the Area, ISBA/30/C/CRP.1, Regulation 2, para. 4.

[14] *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, para. 30.

Secondly, I wish to turn to the linkages between the Tribunal and another body established under the Convention, namely, the CLCS. According to article 76, paragraph 8, of the Convention, the mandate of the CLCS is to make recommendations to a coastal State on matters related to the establishment of the outer limits of its continental shelf. This process, often referred to as "delineation", is different from the "delimitation" of an outer continental shelf. Under article 83 of the Convention, the latter function is assigned to competent forums provided for in Part XV of the Convention, including the Tribunal.

As the Tribunal observed in its Judgment in the *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, the first ever instance in which an international court or tribunal delimited the continental shelf beyond 200 nautical miles, "[t]he Convention sets up an institutional framework with a number of bodies to implement its provisions, including the [CLCS], the [ISA] and this Tribunal. Activities of these bodies are complementary to each other so as to ensure coherent and efficient implementation of the Convention." [15] This principle of complementarity has since shaped the Tribunal's approach to its relationship with other institutions under the Convention.

In the *Bangladesh/Myanmar* case, both Parties had made submissions to the CLCS, but the Commission was not in a position to consider them in the absence of mutual consent. The Tribunal therefore faced the question whether it should refrain from exercising jurisdiction until the CLCS had made its recommendations. After emphasizing that the function of the CLCS related to delineation is without prejudice to the delimitation function of international courts, and vice versa,[16] the Tribunal stated that in the present case, it "would have been hesitant to proceed with the delimitation of the area beyond 200 nm had it concluded that there was significant uncertainty as to the existence of a continental margin in the area in question."[17] However, in this regard, the Tribunal noted that "the Bay of Bengal presents a unique situation, as acknowledged in the course of negotiations at the Third United Nations Conference

[15] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment of 14 March 2012,* para. 373.

[16] *Ibid.,* para. 379.

[17] *Ibid.*, para. 443.

on the Law of the Sea."[18] Noting the "uncontested scientific evidence regarding the unique nature of the Bay of Bengal and information submitted during the proceedings", the Tribunal decided to proceed with the delimitation.[19]

This reasoning laid the foundation for the Tribunal's subsequent decision in the *Mauritius/Maldives* case, which, as I implied earlier, represented the first delimitation case between two archipelagic States. In that case, the Special Chamber not only applied but also further clarified the "significant uncertainty" standard in *Bangladesh/Myanmar*.

Specifically, the Special Chamber explained that the "significant uncertainty" standard "serves to minimize the risk that the CLCS might later take a different position regarding entitlements in its recommendations from that taken by a court or tribunal in a judgment."[20] Applying this standard, the Special Chamber found that it was not in a position to determine Mauritius' entitlement and thus did not proceed with delimitation beyond 200 nautical miles.[21] It noted that "the exercise of caution is called for in the circumstances of the present case, where there may be a risk of prejudice to the interests of the international community in the Area and the common heritage principle."[22]

With its finding, the Chamber acknowledged the impasse arising from the fact that neither Party had given consent for the CLCS to consider the other's submission. It encouraged both Parties to contemplate giving such consent, demonstrating its awareness of the importance of effective coordination among the Convention's institutions.[23]

Building on this spirit of complementarity, I finally turn to the relationship between the Tribunal and the ICJ. Part XV of the Convention sets out the role of these two judicial bodies: either may be chosen by States Parties as the forum for the settlement of disputes concerning the interpretation or application of the Convention.

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[18] *Ibid*., para. 444.

[19] *Ibid.*, para. 446.

[20] *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Judgment of 28 April 2023,* para. 433.

[21] *Ibid.,* para. 451.

[22] *Ibid.,* para. 453.

[23] See *ibid.,* para. 456.

Obviously, the existence of multiple judicial bodies entails the risk of inconsistent jurisprudence, or judicial fragmentation. While differences may occasionally arise, the jurisprudence of ITLOS and of the ICJ have generally reinforced each other, contributing to greater coherence and consistency in the law of the sea.

This complementary relationship is reflected in the jurisprudence of both bodies. In the *Bangladesh/Myanmar* case, the Tribunal referred to the three-stage approach established by the ICJ in the *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* case and followed the same approach subsequently. In turn, the ICJ referred to the *Bangladesh/Myanmar* case in its subsequent maritime delimitation cases, such as the *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya)* case. To illustrate this dynamic further, I will briefly discuss two recent examples: the Special Chamber's Judgment on Preliminary Objections in the *Mauritius/Maldives* case and the ICJ's Advisory Opinion of 23 July 2025 concerning the *Obligations of States in respect of Climate Change*.

Let us first look at the Judgment on Preliminary Objections in the *Mauritius/Maldives* case, which demonstrates how the Special Chamber drew extensively on the ICJ's 2019 Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*.

In its Judgment, the Special Chamber noted that while it is generally recognized that advisory opinions of the ICJ are not legally binding, "it is equally recognized that an advisory opinion entails an authoritative statement of international law on the questions with which it deals."[24] The Special Chamber explained that such opinions "carry no less weight and authority than those in judgments because they are made with the same rigour and scrutiny by the 'principal judicial organ' of the United Nations with competence in matters of international law."[25]

On that basis, the Special Chamber concluded that "determinations made by the ICJ in an advisory opinion cannot be disregarded simply because the advisory opinion is not binding."[26] The Chamber "recognize[d] those determinations, and [took]

[24] *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment of 28 January 2021*, para. 202.

[25] *Ibid.*, para. 203.

[26] *Ibid.*, para. 205.

them into consideration in assessing the legal status of the Chagos Archipelago."[27] In adopting this view of the legal effect of the ICJ's advisory opinion, the Special Chamber not only advanced the understanding of the advisory function itself but also strengthened the harmony and coherence among international courts and tribunals.

Turning now to the ICJ's *Advisory Opinion on Obligations of States in respect of Climate Change*, we find a further example of how the jurisprudence has developed in a spirit of complementarity.

When considering the questions submitted to it by the United Nations General Assembly, especially on those aspects related to the law of the sea, the ICJ was mindful of the jurisprudence of the Tribunal. In particular, as I touched upon earlier in my address, the Tribunal had rendered a landmark Advisory Opinion on 21 May 2024, in which it elaborated in detail on States Parties' obligations to combat climate change under the Convention. In this regard, the ICJ made a notable general acknowledgment of the Tribunal's case law, stating that "since its establishment, ITLOS has developed a considerable body of jurisprudence on UNCLOS, both in contentious and advisory proceedings … [and] in so far as it is called upon to interpret the Convention, it should ascribe great weight to the interpretation adopted by the Tribunal."[28]

Consistent with this view, in the section of its Advisory Opinion devoted to the law of the sea, the ICJ referred to the interpretation adopted in the Tribunal's Advisory Opinion of 21 May 2024 on multiple occasions, including with regard to the question whether anthropogenic GHG emissions constitute pollution of the marine environment,[29] as well as with regard to articles 192, 193, 194, 197 and 206 of the Convention.[30] Beyond this, the ICJ also referred to the jurisprudence of the Tribunal on matters such as the obligation of due diligence,[31] the risk of significant harm to the environment,[32] the duty to cooperate[33] and the relationship between obligations

[27] *Ibid*., para. 206.

[28] *Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 338.

[29] See *ibid*., para. 340.

[30] See *ibid*., paras. 342-344, 346-347, 351 and 353.

[31] See *ibid*., paras. 138, 251-252, 281, 287, 291, 343 and 347.

[32] See *ibid*., paras. 275-276.

[33] See *ibid*., paras. 140, 302-304 and 351.

arising from different sources of international law,[34] thereby following the interpretation adopted by the Tribunal in its Advisory Opinion.

Through these examples, the Tribunal and the ICJ have not only strengthened the coherence of the law of the sea but also underscored the complementarity between their respective jurisprudence in the interpretation and application of the Convention.

Excellencies, distinguished guests,

As we commemorate a decade of this forum, we celebrate not only its achievements but also our shared dedication to the rule of law at sea, a principle that is ever more vital in today's complex geopolitical environment. As ocean challenges evolve, sustained institutional cooperation and continued legal clarification remain essential. The Tribunal will continue to play a key role in this regard, providing authoritative interpretation and guidance, including through advisory opinions.

Looking ahead, the international community must together navigate pressing issues, such as sea level rise, deep seabed mining and emerging ocean technologies, ensuring that the law of the sea remains a resilient and unifying foundation for global ocean governance. The next decade will undoubtedly bring new challenges, yet the foundation of the rule of law at sea, firmly anchored in the Convention, remains strong and will continue to guide our collective efforts toward a peaceful, just and sustainable future for the oceans.

I thank you for your kind attention.

[34] See *ibid*., paras. 313-315.