

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA  
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER



**Statement given by His Excellency, Judge Jin-Hyun Paik,  
President of the International Tribunal for the Law of the Sea  
at the opening of the regional workshop in Montevideo**

**13 November 2019**

Dr Carlos Mata, Director of International Law at the Ministry of Foreign Affairs of Uruguay,  
Distinguished delegates,  
Ladies and Gentlemen,

It is an honour for me today to open this regional workshop on “The role of the International Tribunal for the Law of the Sea in the settlement of disputes relating to the law of the sea”.

The workshop is organized by the Tribunal in cooperation with the Ministry of Foreign Affairs of Uruguay. I would like to convey, through you, Dr Mata, our gratitude to your Government and, in particular, to the Ministry of Foreign Affairs, whose support has been fundamental to the organization of this event.

I also would like to express our gratitude to the Korea Maritime Institute, whose funding made the organization of the workshop possible. Moreover, my special thanks go to the Secretariat of the Mercosur for hosting us here on their premises and for providing these excellent facilities.

I would like to welcome all the participants to this workshop. It is a great pleasure to see you all here. Allow me to introduce to you my colleagues from the Tribunal who have come with me today: Judge Elsa Kelly; Judge Tomas Heidar; Judge Óscar

Cabello Sarubbi; the Registrar, Ms Ximena Hinrichs Oyarce; and the Head of the Legal Office, Mr Matthias Füracker.

It is a privilege for the Tribunal to hold this workshop in Latin America, and in Uruguay in particular.

The Latin American group of States can pride itself on having made a major and lasting impact on the law of the sea. As was aptly put by the noted jurist and diplomat Professor Francisco García-Amador: “[t]he contribution to this body of law made by the Latin American countries has no parallel in any other group of countries or region. This contribution has been not only fruitful but extremely varied.”<sup>1</sup>

While Latin America’s involvement in the development of the law of the sea has a long history, I would like to focus on some highlights from more recent times. In the wake of the two proclamations made by United States President Truman on the continental shelf and fisheries in 1945, Latin American States were at the forefront of initiatives to establish coastal States’ rights over the natural resources in adjacent waters and the continental shelf. Their concerted action resulted in the adoption of several sub-regional declarations of principle bearing great historical value.

In this connection, let me recall that it was in this very city of Montevideo that, nearly fifty years ago, on 8 May 1970, delegations of several Latin American States signed one such important declaration, the “Montevideo Declaration on the Law of the Sea”.

With the benefit of hindsight, it is readily apparent that, despite the initial reluctance of certain States from other parts of the world, these Latin American efforts initiated a process that would ultimately result in the formation of new customary rules of international law.<sup>2</sup>

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<sup>1</sup> F.V. García-Amador, “The Latin American Contribution to the Development of the Law of the Sea”, 68 *AJIL* (1974) 33-50, p. 33.

<sup>2</sup> T. Treves, “Historical Development of the Law of the Sea”, D.R. Rothwell, A.G. Oude Elferink, K.N. Scott and T. Stephens (eds.), *The Oxford Handbook of the Law of the Sea* (OUP 2015) 1-23, pp. 10-13.

Subsequently, the influence of the Latin America group became decisive throughout the Third United Nations Conference on the Law of the Sea, which led to the adoption of the United Nations Convention on the Law of the Sea in 1982 (the “Convention”). In particular, Latin American resolve was crucial to the recognition of three core concepts that form part and parcel of the Convention: the 200-mile exclusive economic zone; the regime of the continental shelf; and the Area, which has the status of “common heritage of mankind”.<sup>3</sup>

Since the entry into force of the Convention, Latin America has continued to influence development of the law of the sea. Latin American States bordering the Atlantic Ocean have spearheaded the process of establishing the outer limits of national jurisdiction through their early submissions to the Commission on the Limits on the Continental Shelf.<sup>4</sup> States from this region also play an important role in ocean governance, in particular through their participation in mechanisms devoted to fisheries<sup>5</sup> as well as the protection of endangered species.<sup>6</sup> In sum, the Latin American contribution to the law of the sea shows no sign of abating.

Among the Latin American States, our host country for this workshop, Uruguay, has a longstanding and sustained interest in the law of the sea and has been an important contributor to the development of the modern law of the sea, embodied in the United Nations Convention on the Law of the Sea. Uruguay played an active role within the Latin American group of States during the negotiations leading up to the establishment of the Convention. Furthermore, Uruguay’s commitment to the Convention is borne out by the fact that, following the Conference, it was amongst the 119 countries to sign the Convention on the very first day it was opened for signature – on 10 December 1982. It ratified the Convention ten years later, on 10 December 1992.

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<sup>3</sup> E. Ferrero Costa, “Latin America and the Law of the Sea”, in H.N. Scheiber and J.-H. Paik (eds.), *Regions, Institutions, and Law of the Sea* (Nijhoff 2013) pp. 383-410, 383-385.

<sup>4</sup> X. Hinrichs Oyarce, “The Latin American Perspective on Global Ocean Governance”, in D.J. Attard, D.M. Ong and D. Kritsiotis (eds.), *The IMLI Treatise on Global Ocean Governance* (vol. I, OUP 2018) pp. 261-280, 265-71, 279.

<sup>5</sup> E.g. Latin American Organization for Fisheries Development.

<sup>6</sup> E.g. Inter-American Convention for the Protection and Conservation of Sea Turtles.

Of course, when thinking about Uruguay and its involvement in the law of the sea, the name of Ambassador and Professor Felipe Paolillo comes to mind. He was actively involved in the negotiations at the Third United Nations Conference. Thereafter, he became Deputy Special Representative of the United Nations Secretary-General for the Law of the Sea and later pursued a distinguished career in Uruguay's diplomatic service.

Distinguished delegates,

As you are well aware, the drafters of the 1982 Convention considered that a robust system of dispute settlement was essential for the effective operation of the Convention. Undoubtedly, the adoption of a compulsory dispute-settlement mechanism was a major achievement of the Convention.

The International Tribunal for the Law of the Sea is the centrepiece of this system of dispute settlement. It was established by the Convention as an international judicial body to adjudicate disputes concerning the interpretation or application of the Convention and all matters specifically provided for in any other agreement conferring jurisdiction on the Tribunal.

Of course, under Part XV of the Convention, States Parties have a choice between four different means of compulsory dispute settlement, namely the Tribunal, the International Court of Justice ("the ICJ"), an Annex VII arbitral tribunal, or an Annex VIII special arbitral tribunal. Nevertheless, the Tribunal plays a unique role in the Convention regime and is irreplaceable in the effective functioning of its legal system.

The Tribunal is the only permanent judicial institution created by the Convention and performs wide-ranging functions, some of which are exclusive to it, such as the prompt release procedure. It sees its role as that of a "guardian" of the Convention and seeks to ensure the cohesiveness of the system as whole.

Let me also recall that the establishment of the Tribunal as a “new” judicial body was an idea promoted and supported by a larger number of States, including many developing States, in a desire to create an institution of an inclusive character and representative of global diversity.

The Tribunal’s institutional composition responds to these concerns. Composed of 21 judges from all regions of the world, the Tribunal is an institution which ensures an equitable geographical representation, and the majority of its judges come from developing countries. Equitable geographical representation is even prescribed by the Tribunal’s Statute which, in its article 3, paragraph 2, requires that “[t]here shall be no fewer than three members from each geographical group as established by the General Assembly of the United Nations.”

Furthermore, the Tribunal is a specialized judicial body. Its Statute requires that the judges have “recognized competence in the field of the law of the sea”. Indeed, the law of the sea is a highly complex legal field, marked by a multitude of ever-evolving political, strategic and economic interests of States. It is also a highly dynamic area of law, which is driven by social and, in particular, scientific and technological change. The adjudication of law of the sea disputes therefore requires expert knowledge of, and specialized experience in, this field.

Since its establishment, the Tribunal has earned the trust of the States Parties to the Convention and proven that it is capable of performing its mandate successfully. It has been seized of 28 cases so far, concerning a variety of aspects of the law of the sea. One sign of the trust States have in the Tribunal is also that, in several cases, States have decided to transfer to the Tribunal cases that were initially submitted to arbitration.

In its decisions, the Tribunal has provided judicial resolution of, sometimes long-standing, disputes and it has made significant contributions to the development of the law of the sea. In dealing with the cases brought before it, the Tribunal has built a reputation for offering efficient procedures that facilitate expedient dispute settlement.

The Tribunal has seen a growing number of cases being submitted to it by States around the world. Several of those cases involved States from Latin America, for instance Argentina and Chile, from among those that are represented here today. So far, however, the Tribunal has not dealt with law of the sea disputes between two Latin American States. This is, of course, not because those States are generally unwilling to make use of judicial dispute settlement in bilateral cases. On the contrary, in an admirable move, Latin American States agreed, at an early historical moment, in 1948, to establish a comprehensive system for the compulsory settlement of such disputes.

I am referring to the American Treaty on Pacific Settlement, concluded on 30 April 1948 in Bogotá, Colombia, and therefore commonly called the “Pact of Bogotá”. Several of the States represented here today are parties to that “Pact”.<sup>7</sup> There is no doubt that the “Pact” is an impressive legal instrument. Among other possibilities for dispute settlement, it provides for the unilateral submission of disputes to the ICJ. Historically, this choice is not surprising. In 1948, the ICJ was the only international judicial body available that could adjudicate public international law disputes between States.

However, today’s world of international courts and tribunals is fundamentally different in many aspects from what it was in 1948. As I have just set out, one of those aspects is the existence of an international tribunal specialized in matters of international law of the sea and established by a universally accepted international convention – the International Tribunal for the Law of the Sea in Hamburg. The Tribunal, as you may know, is the global adjudicatory body entrusted with the specific mission of resolving law of the sea disputes between States Parties to the law of the sea Convention.

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<sup>7</sup> States represented at the workshop participate in the Pact of Bogotá is as follows: **Current parties:** Brazil, Chile, Ecuador, Paraguay, Peru, Uruguay. **Former party:** Colombia (denounced in 2012). **Signatories but not parties (no ratification):** Argentina, Venezuela. **Neither signatories nor parties:** Guyana, Suriname.

A number of States are parties to the Convention as well as to the “Pact of Bogotá”.<sup>8</sup> Nevertheless, disputes between them concerning the interpretation or application of the Convention may still be submitted to the Tribunal. And indeed, States might have good reason to bring such a dispute to the Tribunal – in particular in light of its special role and competence that I referred to earlier. Also, States might consider advantageous the fact that decisions of the Tribunal are regularly handed down in a very expedient manner.

In this connection, let me draw your attention to the following: A number of States that are parties to the Convention as well as to the “Pact of Bogotá” have made declarations pursuant to article 287 of the Convention, choosing their preferred means of dispute settlement. Several of those declarations are in favour of the Tribunal.<sup>9</sup> I wish to welcome those declarations and to encourage States which have not yet done so to consider whether they too could make such declaration.

The existence of these declarations raises an interesting legal issue. Let us assume, for the sake of argument that a dispute concerning the interpretation or application of the Convention arises between two of those States that have made declarations in favour of the Tribunal. Pursuant to article 287, paragraph 4, of the Convention, such a dispute could be submitted to the Tribunal unilaterally by either of these States. If this were to occur and the respondent State did not object to the Tribunal’s jurisdiction, I see no reason why the Tribunal could not proceed with the case.

If the respondent State were to object to the Tribunal’s jurisdiction, however, article 282 of the Convention could be relevant. It provides that, if States Parties to the Convention have agreed upon other dispute-settlement procedures entailing binding decisions in general, regional or bilateral agreements, then those procedures

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<sup>8</sup> These States are (States participating in the workshop are in bold): Bolivia, **Brazil**, Costa Rica, **Chile**, Dominican Republic, **Ecuador**, Haiti, Honduras, Mexico, Nicaragua, Panama, **Paraguay**, **Uruguay**.

<sup>9</sup> ITLOS (Chile, Ecuador, Mexico and Uruguay; in a restricted way: Panama); ICJ (Honduras and Nicaragua).

would apply “in lieu” of the Convention’s dispute-settlement system.<sup>10</sup> Such a regional agreement might of course be the “Pact of Bogotá”.

However, it must not be overlooked that, under article 282 of the Convention, States may always agree otherwise. In fact, this article states explicitly that an alternative procedure will apply only “in lieu” of the procedures provided for in the Convention, “unless the parties to the dispute otherwise agree.”

Should, therefore, the respondent State, in our imaginary case, invoke article 282 of the Convention, the legal question might arise as to what the significance of the declarations made by the two States concerned in favour of the Tribunal under article 287 could be. It might be asked whether those two declarations could constitute an agreement which overrides article 282 and allows for the submission of the dispute to the Tribunal.

You will understand that I cannot offer an answer to this question at this point as this is an issue that might possibly have to be decided by the Tribunal one day. So, for the time being, I leave the question to the ingenuity of the legal minds in the governments of the States concerned.

Let me mention, however, that there is also, of course, another possibility available to States parties to the “Pact of Bogotá” for submitting a dispute to the Tribunal. This other possibility is the submission of the case through a special agreement (a so-called “*compromis*”) concluded between the parties for that purpose.

I would like to add that this way is also open to States that are not parties to the Convention. Pursuant to article 20, paragraph 2, of the Tribunal’s Statute, they can be parties to a case before the Tribunal “in any case submitted pursuant to another agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case.”

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<sup>10</sup> Article 282 reads: “If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree.”



At all events, I wish to encourage the governments of States that are parties to the “Pact of Bogotá” to consider ways of bringing law of the sea disputes preferably to the International Tribunal for the Law of the Sea.

As the only permanent judicial institution to have been created by the Convention, the Tribunal has the duty to act as the principal judicial guardian of the legal order of the oceans and is best placed to ensure a cohesive interpretation and application of the Convention. The Tribunal is conscious of this role; it has actively exercised it in its jurisprudence and will continue to do so. Let me emphasize that our door will always be open for all States Parties to the Convention, including those that are parties to the “Pact of Bogotá”, and other States wishing to bring a dispute before the Tribunal.

Distinguished delegates,

The Montevideo workshop is the fourteenth in a series of regional workshops organized annually by the Tribunal throughout the world in order to raise awareness of what the Tribunal can offer in settling disputes related to the law of the sea. The purpose of the workshops is to provide government experts working in the maritime field with insight into the procedures for the settlement of disputes contained in Part XV of the Convention, with special focus on the jurisdiction of the Tribunal and the procedures for bringing cases before it. Previous workshops have been held in Senegal, Gabon, Jamaica, Singapore, Bahrain, Argentina, South Africa, Fiji, Mexico, Kenya, Indonesia, Costa Rica, and Cabo Verde.

This year’s workshop deals not only with procedural issues related to proceedings before the Tribunal but also with two substantive issues particularly relevant to Latin American States, namely maritime boundary delimitation and fisheries. You may know that the Tribunal has handed down landmark decisions on those subjects.

During the workshop, my colleagues and I will provide you with more details of the procedures and of those landmark cases submitted to the Tribunal. We all look forward to working and discussing with you during the course of the next two days.

I would like to conclude by reiterating our appreciation to the Government of Uruguay for the excellent hospitality extended to us and all the support we have received in preparing this workshop. I thank you for the opportunity to be here today, and I look forward to the lively exchange of ideas that will take place during the workshop.