The Role of International Dispute Settlement Institutions in the Delimitation of the Outer Continental Shelf

Rüdiger Wolfrum*

I. INTRODUCTION

Assessing the role of international dispute settlement institutions in the delimitation of the outer continental shelf makes it necessary to distinguish between three different scenarios namely: First, the establishment by a coastal state of the outer limits of its continental shelf on the basis of the recommendations of the Commission on the Limits of the Continental Shelf (Commission), second, the establishment of these limits not being based upon a respective recommendation of the Commission and third, those limits having been established without the coastal State concerned having consulted the Commission at all. It is the first scenario which is discussed controversially in literature,¹ the

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* President of the International Tribunal for the Law of the Sea.

legislative history of the respective provisions of the Convention on the Law of the Sea being inconclusive whether in this case there is still room for judicial dispute settlement. The provision causing such divergence of views stems from the wording of the last sentence of Article 76, paragraph 8, of the Convention on the Law of the Sea (Convention) according to which “The limits of the shelf established by a coastal State on the basis of these recommendations [of the Commission] shall be final and binding.”

To establish whether the recommendations of the Commission or decisions of a State based thereupon may be challenged before a dispute settlement institution under Part XV of the Convention makes it necessary to deal with several issues. First, it is necessary to assess the functions the Commission exercises in respect to a coastal State having submitted its data concerning the outer limits of its continental shelf as well as in respect to other States which, in one way or the other may be affected by the establishment of the limits of this particular outer continental shelf. To be more concrete, it is necessary to establish whether the Commission exercises judicial or quasi-judicial functions which may exclude third party dispute settlement. A second issue is as to whether Articles 297 and 298 of the Convention contain limitations or exceptions concerning the jurisdiction of a judicial dispute settlement institution under Part XV of the Convention. A third issue which has to be answered on the basis of international law in general rather than on the basis of the Convention on the Law of the Sea is whether a State, an international organization or another entity may have standing concerning the establishment of the outer limits of a particular continental shelf.

As far as the two other scenarios referred to above are concerned only the two latter issues are of relevance. The three issues will be dealt with in the order as indicated.