PANEL VI:

MARINE SCIENCE AND LAW
Scientific Evidence in Cases under Part XV of the LOSC

David Anderson¹

Abstract

The modern law of the sea, centred around the UN Convention on the Law of the Sea, looks to science and applies scientific tests in several different contexts. The particular scientific discipline varies from the biology of species of fish, to geology and other Earth sciences, to oceanography and other environmental sciences, and finally to scientific research itself. If a dispute over such a matter were to be submitted to a court or tribunal under Part XV of the Convention, there may well be a need for scientific evidence and argument to be introduced in the written and oral pleadings of the parties. One or both of the parties may also see a need to call an expert witness to give evidence on the disputed scientific issues.

International judges tend to have a diplomatic or legal background: their experience does not often extend to questions of science. Any scientific knowledge they may have acquired is no more than general knowledge. Judges are familiar with the interpretation and application of treaties, including ones that apply scientific tests; but judges cannot decide disputed questions of science. Scientific evidence, especially where the parties are in disagreement about scientific issues, may create difficult problems for a court or tribunal. In these circumstances, the parties should consider most carefully how best to present their argument and evidence on scientific issues. Experience shows that joint approaches have much to commend them. Independent experts can give valuable evidence.

In this connection, some relevant practice of the International Tribunal for the Law of the Sea is examined.

¹ Former Judge, International Tribunal for the Law of the Sea.