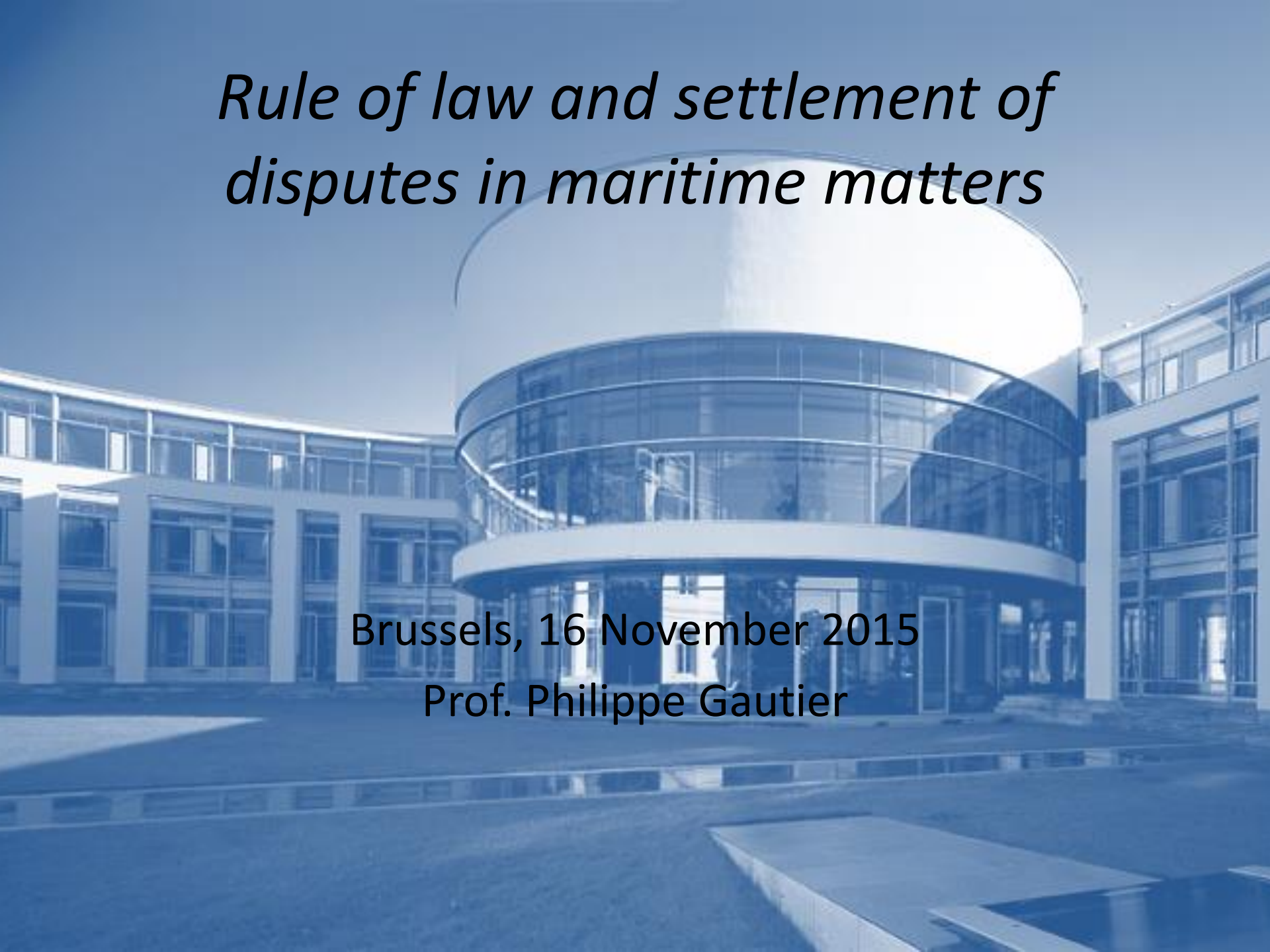
Rule of law and settlement of disputes in maritime matters



Brussels, 16 November 2015

Prof. Philippe Gautier

UNCLOS (1982)

- PART I. INTRODUCTION (use of terms)
- PART II. TERRITORIAL SEA AND CONTIGUOUS ZONE
- PART III. STRAITS USED FOR INTERNATIONAL NAVIGATION
- PART IV. ARCHIPELAGIC STATES
- PART V. EXCLUSIVE ECONOMIC ZONE
- PART VI. CONTINENTAL SHELF
- PART VII. HIGH SEAS
- PART VIII. REGIME OF ISLANDS
- PART IX. ENCLOSED OR SEMI-ENCLOSED SEAS
- PART X. RIGHT OF ACCESS OF LAND-LOCKED STATES TO AND FROM THE SEA AND FREEDOM OF TRANSIT
- PART XI. THE AREA
- PART XII. PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT
- PART XIII. MARINE SCIENTIFIC RESEARCH
- PART XIV. DEVELOPMENT AND TRANSFER OF MARINE TECHNOLOGY
- PART XV. SETTLEMENT OF DISPUTES
- PART XVI. GENERAL PROVISIONS
- PART XVII. FINAL PROVISIONS

UNCLOS

- 167 States Parties (including the EU)
- “Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans”
- “Affirming that matters not regulated by this Convention continue to be governed by the rules and principles of general international law”
- Part XV (Settlement of disputes)

Settlement of disputes under UNCLOS (Part XV)

- Section 1: General Provisions
- Section 2: Compulsory Procedures
- Section 3: Limitations and Exceptions

Article 287
Choice of procedure

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

   (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;

   (b) the International Court of Justice;

   (c) an arbitral tribunal constituted in accordance with Annex VII;

   (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein. (…)

3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.

4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.

Limitations and exceptions

- Article 297 (limitations): certain disputes relating to scientific research and fisheries in the EEZ
- Article 298 (optional exceptions): disputes relating to maritime delimitation, military activities, and in respect of which the United Nations Security Council is exercising its functions under the Charter

Declarations (art. 287)	(ICJ, art. 36 (2))
• Asia: 4 Bangladesh (ITLOS) Fiji (ITLOS) Oman (ITLOS/ICJ) Timor-Leste (ITLOS/ICJ/Arbitration)	8 Cambodia, Cyprus, India*, Japan*, Marshall Islands, Pakistan, Philippines*, Timor-Leste
• Africa: 9	22
• GRULAC: 11	13
• Eastern Europe: 10	8
• WEOG: 16	21
• EU: 18 (Austria, Belgium, Denmark, Finland, Germany, Greece, Italy, Netherlands, Portugal, Spain, Sweden, UK, Croatia, Estonia, Hungary, Latvia, Lithuania, Slovenia)	22 (Austria, Belgium, Denmark, Finland, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Portugal, Spain, Sweden, UK, Bulgaria, Estonia, Hungary, Lithuania, Poland, Romania, Slovakia)

Declarations (art. 298)

- China (par. 1 (a), (b) and (c))
- Palau (par. 1 (a))
- Republic of Korea (par. 1 (a), (b) and (c))
- Saudi Arabia (par. 1 (a))
- Thailand (par. 1 (a), (b) and (c))

Cases

1998

- ICJ: Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)

1999

- ITLOS: Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Provisional Measures
- Annex VII Arbitration: Southern Bluefin Tuna Case (New Zealand and Australia v. Japan)

2003

- ITLOS: Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures
- Annex VII Arbitration: Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)

2001

- ITLOS : “Chaisiri Refeers 2” (Panama v. Yemen), Prompt Release

2003

- ITLOS: Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures

- Annex VII Arbitration: Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)

- ICJ: Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)

2007

- ITLOS - “Hoshinmaru” (Japan v. Russian Federation), Prompt Release
- ITLOS - “Tomimaru” (Japan v. Russian Federation), Prompt Release

2009

- ITLOS - Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal
- Annex VII Arbitration: Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India

2010

- ICJ - Whaling in the Antarctic (Australia *v.* Japan)

2013

- Annex VII Arbitration: Dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea, The Republic of Philippines v. The People's Republic of China

2015

- ITLOS - “Enrica Lexie” (Italy v. India), Provisional Measures
- Annex VII Arbitration - “Enrica Lexie” (Italy v. India),

Statute, Article 24
Institution of proceedings

1. Disputes are submitted to the Tribunal, as the case may be, either by notification of a special agreement or by written application, addressed to the Registrar. In either case, the subject of the dispute and the parties shall be indicated.
2. The Registrar shall forthwith notify the special agreement or the application to all concerned.
3. The Registrar shall also notify all States Parties

ITLOS/CASES

- M/V “SAIGA” (Saint Vincent and the Grenadines v. Guinea), Prompt Release
- M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)
- Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures
- “Camouco” (Panama v. France), Prompt Release
- “Monte Confurco” (Seychelles v. France), Prompt Release
- Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)
- “Grand Prince” (Belize v. France), Prompt Release
- “Chaisiri Reefer 2” (Panama v. Yemen), Prompt Release
- MOX Plant (Ireland v. United Kingdom), Provisional Measures
- “Volga” (Russian Federation v. Australia), Prompt Release
- Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures
- “ Juno Trader ” (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release
- “Hoshinmaru” (Japan v. Russian Federation), Prompt Release
- “Tomimaru” (Japan v. Russian Federation), Prompt Release
- Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal
- Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the International Seabed Area (Advisory Opinion to the SBDC)
- M/V “Louisa” (Saint Vincent and the Grenadines v. Spain)
- M/V “Virginia G” (Panama/Guinea-Bissau)
- “ARA Libertad” (Argentina v. Ghana)
- Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission
- “Arctic Sunrise” (Netherlands v. Russian Federation)
- Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean
- “Enrica Lexie” (Italy v. India), Provisional Measures

The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)

Compensation

ANNEX

(Paragraph 175 (f))

Name	Crew members/ other persons	Amount of Compensation in US$
Klyuyev, Sergey	Crew member	1,700
Bilonozhko, Mykola	Crew member	3,300
Bobrovnik, Oleksandr	Crew member	3,300
Gaponenko, Oleksandr	Crew member	3,300
Ivanov, Oleksandr	Crew member	3,300
Komanych, Yevgeniy	Crew member	3,300
Krivenko, Vadim	Crew member	3,300
Kutovy, Volodymyr	Crew member	3,300
Lashchyonyk, Yevhen	Crew member	3,300
Lymar, Volodymyr	Crew member	3,300
Maslov, Sergiy	Crew member	3,300
Nezdiyminoha, Vyacheslav	Crew member	3,300
Popov, Nikolay	Crew member	3,300
Shevchenko, Volodymyr	Crew member	3,300
Soltys, Vasyl	Crew member	3,300
Stanislavsky, Denys	Crew member	3,300
Svintsov, Yevgeniy	Crew member	3,300
Tatun, Sergiy	Crew member	3,300
Vadym, Baranov	Crew member	3,300
Volynets, Konstantin	Crew member	3,300
Vyshnevsky, Oleksandr	Crew member	3,300
Fall, Lat Soukabe	Painter	3,300
Niasse, Djibril	Painter	1,700
Sene, Abdulaye	Painter	3,300
	Total	**76,000**

The M/V "Virginia G" Case (Panama/Guinea-Bissau)

Obligations of flag States

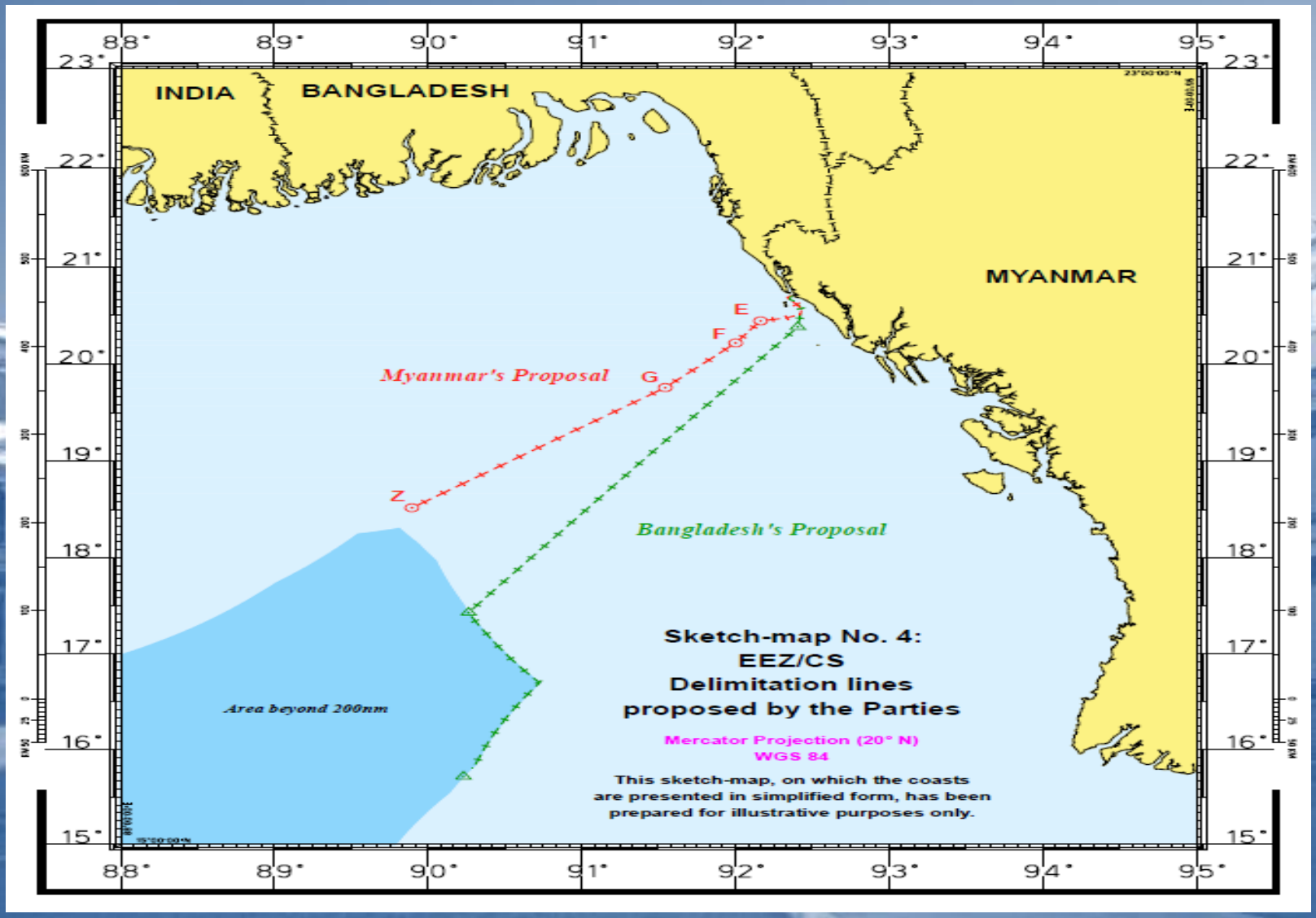
- Article 94 (3): “ Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:

  (a) the construction, equipment and seaworthiness of ships;

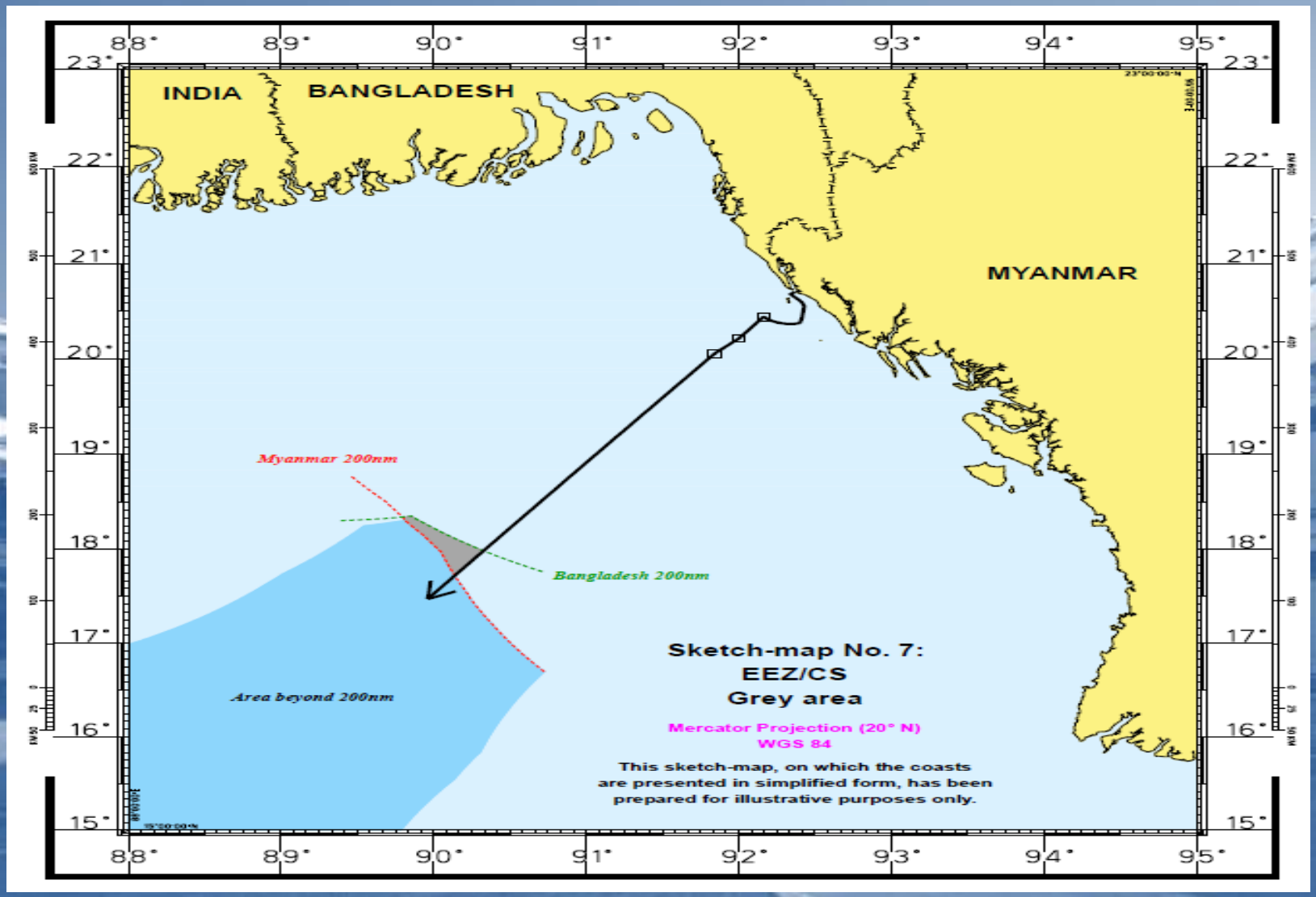
  (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments; (…) ”
- Article 217 (2): “States shall, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of the international rules and standards referred to in paragraph 1, including requirements in respect of design, construction, equipment and manning of vessels”.


PRESTIGE
© Ifremer

ITLOS Case No. 16:
Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)



ITLOS Case No. 16:
Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)



Advisory opinion

"The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal."

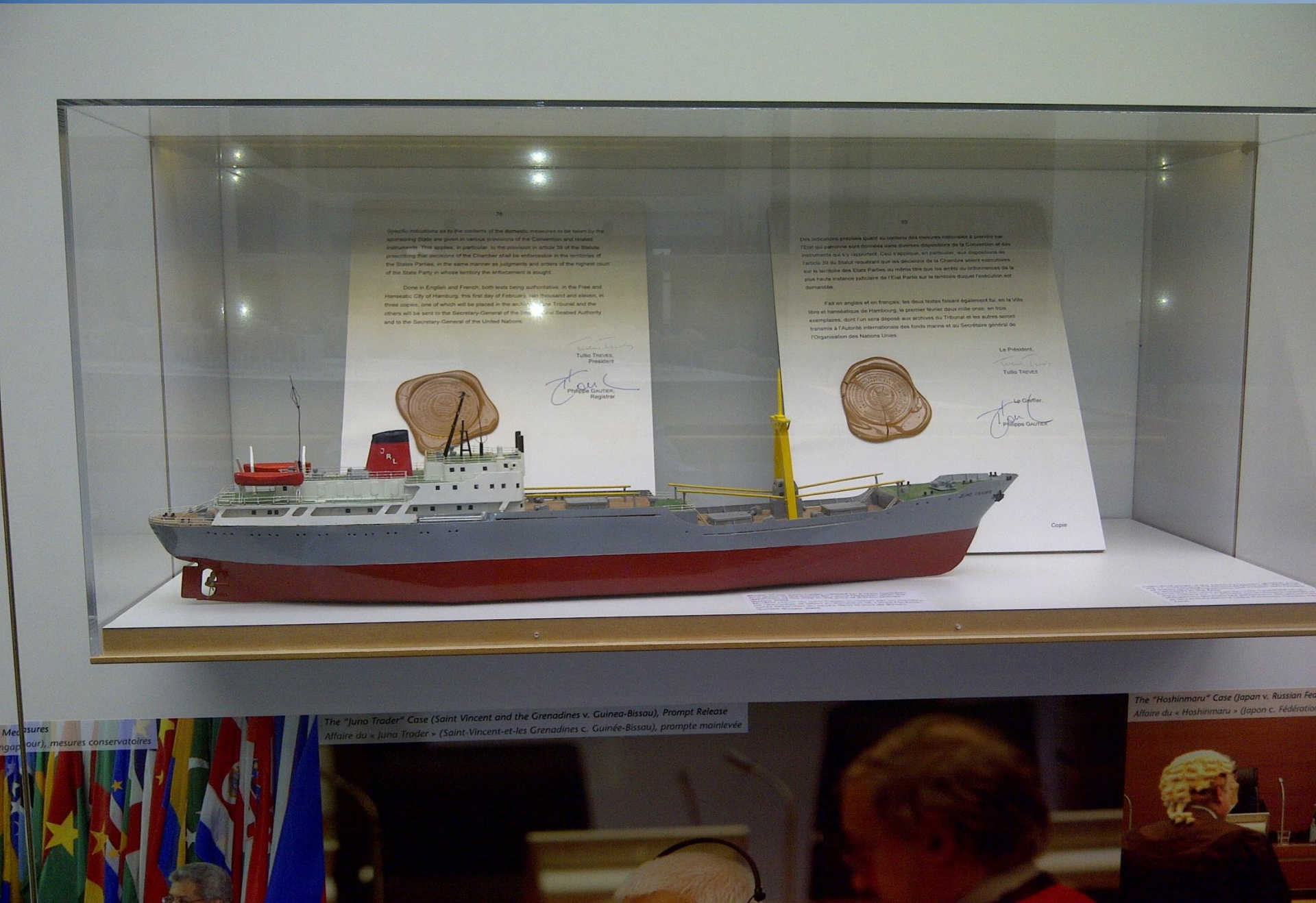
(Statute, art. 21)

1. The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion
2. A request for an advisory opinion shall be transmitted to the Tribunal by whatever body is authorized by or in accordance with the agreement to make the request to the Tribunal

(Rules, art. 138)

The "Tomimaru" Case and *The "Hoshinmaru" Case (Japan v. Russian Federation), Prompt Release*

The "Juno Trader" Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release



The "Juno Trader" Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release
Affaire du « Juno Trader » (Saint-Vincent-et-les Grenadines c. Guinée-Bissau), prompte mainlevée

The "Hoshinmaru" Case (Japan v. Russian Fed
Affaire du « Hoshinmaru » (Japon c. Fédération

Provisional Measures

"Arctic Sunrise"

(Netherlands v. Russian Federation)

"ARA Libertad"

(Argentina v. Ghana)

Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures (1999)

THE STRAITS OF JOHOR CASE

- Malaysia vs. Singapore
- Provisional measures
- Order of 8 October 2003

Article 74 - Delimitation of the exclusive economic zone between States with opposite or adjacent coasts

1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. …

Case-law

- Aegean Sea case (1976)
- Guyana - Suriname (2007)

Article 298 (1)

(a)(i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;

Article 298 (1)

(b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3;

Conciliation

Article 298 (1) (a)

(i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;

(ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree;