THE JUDICIAL SETTLEMENT OF DISPUTES ARISING OUT OF SPACE ACTIVITIES : RETURNING TO AN OLD PROPOSAL*

by

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There is no doubt that liability and the settlement of disputes arising out of space activities are some of the most challenging areas of space law. International instruments of space law, and in particular the "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies" (which entered into force on October 10, 1967) thirty years ago, and the "Convention on International Liability for Damage Caused by Space Objects", effective on October 9,1973, are already outdated and lack precision.

Thus, neither Article VII of the previously mentioned Outer Space Treaty, nor Articles XIV ff. of the above mentioned Liability Convention, which provide for the establishment of a Claims Commission, if a settlement through diplomatic negotiations has failed, do seem in fact to cover the gap of dispute settlement. The lack of such a mechanism would be certainly more felt, if essential rights of the space powers concerning outer space and celestial bodies might be at stake.

Now, the conclusion of a new agreement setting up a specialized International Court of Justice for Outer Space Matters would be a completely unrealistic idea and proposal. It is true that there is some tendency in international law today to establish specialized international tribunals, as for instance, the International Criminal Tribunal for the Former Yugoslavia (ICTFY), which, as is well known, also has its seat at The Hague, like the International Court of Justice.

Another important example of a Specialized International Court of Justice is the International Tribunal for the Law of the Sea, which was set up by Part XV of the United Nations Convention on the Law of the Sea (1982), which entered into force on November 16,1994.[1] The Tribunal started already its work in Hamburg on October 1,1996, following the election of the 21 members of the Tribunal on August 1,1996.[2]

However, neither the international community nor the United Nations would be willing to set up a specialized International Court of Justice for Outer Space Matters on

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account of the rarity of the occurrence of international space disputes, of the expences involved, etc. Indeed, the Cosmos 954 incident, when a Russian naval reconnaissance satellite, carrying a nuclear reactor with a highly radioactive material for providing power to its remote sensing and communication systems crashed over a remote area of Canada on January 27, 1978, was the first ever and the last until now known case involving international liability of a state for its outer space activities. The "Challenger" disaster did not involve the international liability of the launching state, which was the United States.[3]

The final settlement of the Cosmos 954 case, when the Soviet Union -at that time- agreed to pay Canada three million Canadian dollars in full and final settlement for all claims arising out of the disintegration of its satellite, did not permit the recourse to any Claims Commission, or to any judicial authority to deal with the problems of substance or procedure connected with the satisfaction of such a claim.

Therefore, with a view to solving this problem, i.e., the judicial settlement of disputes arising out of space activities, we suggest to return to a proposal advanced more than thirty years ago by an international and space law lawyer, wh ich has endured the test of time. Dr. Dion. M. Poulantzas proposed during the meeting of 1965 of the International Institute of Space Law that the Chambers of the International Court of Justice be used for the settlement of disputes arising out of space activities.[4]

While at that time the proposal seemed somewhat theoretical, this is not the case anymore. The legal advisers of several states have realized the practical advantage of having recourse to a Chamber of the I.C.J. rather than to the full Court. The first ever case to come before a Chamber of the I.C.J. was that involving the delimitation of the maritime boundary in the Gulf of Maine Area between the United States and Canada.[5]

Thus, by a special agreement ("compromis") notified on November 25, 1981, and filed in the Registry of the I.C.J. the same day, the Governments of the United States and Canada submitted to a Chamber of the International Court of Justice their difference over the delimitation of the maritime boundary in the Gulf of Maine Area. By virtue of the Special Agreement, dated March 29, 1979, and modified subsequently, the two Governments agreed to submit their differences regarding this issue to a Chamber of the I.C.J., to be set up pursuant to Article 26, para. 2, and Article 31 of the Statute of the Court.[6]

The question submitted to a Chamber of the I.C.J. regarded the course of the single maritime boundary that divides the continental shelf and fisheries zone of the two interested states, namely, the United States and Canada, in the Gulf of Maine Area. By virtue of Articles 26 to 31 of the Statute of the I.C.J., the Court by an Order of January 20, 1982, formed a Chamber to deal with this case, according to Articles 70 to 73 of the Rules of the Court.[7]

The Judgement of the I.C.J., sitting as a Chamber of five Judges -including the ad hoc Judge for Canada- was pronounced on October 12, 1984.[8] The proceedings took a rather long time not only because it was the first

time that the I.C.J. sat as a Chamber and there was not enough experience in this procedure[9], but also because of the fact that it was the first time that the Judges of the Court had to draw a single maritime boundary line between two different jurisdictions in an area hotly disputed by both states because of its fishing grounds, rich especially in lobster and scallops.[10] However, the line which was drawn by the Chamber of the I.C.J. -"The Hague line" as it has been called- has ever since almost always been respected by fishermen of both states.[11]

Following that case, several other cases were brought by agreement ("compromis") between the parties before a Chamber of the I.C.J. Most of these cases regarded the delimitation of maritime or other areas between adjacent states.[12]

As it was noted by the previously mentioned author Dr. Dion.M.Poulantzas, the referral of a dispute arising out of outer space activities - by agreement of the parties- to a Chamber of the I.C.J. presents many advantages. He also mentioned the following reasons which call for the choice by the parties of a Chamber of the I.C.J. rather than referring the case to the full Court, to a Claims Commission, or to an Arbitration Tribunal.[13]

1.The flexibility of a Chamber of the I.C.J., which is usually composed of only three to five Judges, as compared to fifteen Judges of the full Court.

2.A Chamber, because of its flexibility, can sit with the consent of the parties at a different location than at the seat of the Court at The Hague. Accordingly, a Chamber can play in fact -because of its flexibility and specialization, especially in territorial disputes- the role of a kind of a fact-finding committee as well, which at the same time may deliver a binding judgment upon the parties. Therefore, the Chambers may be more aware of the particular circumstances of a case through an on-the-spot investigation.

3.The deliberations and proceedings in a Chamber are usually much shorter than in the full Court. This is important in cases where the peace between the parties is at stake, requiring a speedy solution.[14]

4.A definite also advantage of the Chambers over the full Court is that the Chamber's procedure seems more acceptable to those states, which previously seemed more distrustful of the I.C.J. on account of the different -alleged or real- ideology of the majority of the members of the Court. Moreover, the presence of an ad hoc Judge, having the nationality of the parties is far more important within a small Chamber than in the full Court.

5.Finally, the authority of the judgments delivered by the Chambers is equal to the decisions of the full Court. Under Article 27 of the Statute of the I.C.J. the judgments of the Chambers are regarded as rendered by the full Court.[15] This has also been demonstrated by the more recent decisions of the I.C.J. sitting as a Chamber.

It should be also noted that one of the major legal instruments of recent years, the United Nations Convention on the Law of the Sea (1982), which, as already mentioned, entered into force on November 16, 1994, in Part XI regarding the novel notion of "The Area" in the International Law of the Sea, includes several provisions dealing with the establishment of a Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea.[16] Moreover, the Statute of the International Tribunal for the Law of the Sea

includes several provisions regarding the establishment not only of a Sea-Bed Disputes Chamber, but also of an ad hoc Chamber of the Sea-Bed Disputes Chamber, composed of three or more of its elected members to deal with particular categories of disputes.[17]

Concluding, one should express the hope that specialized jurisdictions today, like the Chambers of the International Court of Justice, or of the International Tribunal for the Law of the Sea, which present some of the advantages of an arbitration tribunal or a Conciliation Commission, because of the small number of adjudicators and the institution of the ad hoc Judge, with the increased authority of the International Court of Justice, or, in the course of time, of the International Tribunal for the Law of the Sea, will be used for the settlement of disputes, which might arise out of space activities as well.

FOOTNOTES

1. See N.M.Poulantzas, "The New International Law of the Sea and the Legal Status of the Aegean Sea", Revue hellénique de droit international (RHDI), Athens, 1991, pp.251-272.

2. See N.M.Poulantzas, The Law of the Sea (student edition in Greek language), Piraeus, 1997.

3. For a discussion of the legal issues involved in "The Challenger" disaster of February 1986, see Dion.M.Poulantzas and Nicholas M.Poulantzas, "Intellectual Property Rights Within the Framework of International Organizations and National Agencies", in Revue de droit international, Geneva, 1988, No.3, pp.191-210.

4. See Dion.M.Poulantzas, "The Chambers of the International Court of Justice and Their Role in the Settlement of Disputes Arising Out of Space Activities", Proceedings of the I.I.S.L., 1965, p.127 ff. Reprinted in the Revue hellénique de droit international, Athens, 1965, p.150 ff. See also the same author, "Einige Betrachtungen über die Beilegung von durch Tätigkeiten im Weltraum entstehenden Streitfällen", in Zeitschrift für Luftrecht und Weltraumrechtsfragen, Cologne, 1965, p.319 ff.

5. See Nicholas M.Poulantzas, "The Chambers of the International Court of Justice and the Judicial Settlement of Disputes: The Delimitation of the Maritime Boundary in the Gulf of Maine Area Case", in Revue de droit international, Geneva, 1985, No.4, p.323 ff.

6. See "Special Agreement Between the Government of Canada and the Government of the United States to Submit to a Chamber of the International Court of Justice the Delimitation of the Maritime Boundary in the Gulf of Maine Area".

7. See Case Concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Order of January 20, 1982, Constitution of Chamber, pp.3-13.

8. See Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), I.C.J., Recueil 1984.

9. See Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Order of 1 February 1982; Order of 28 July 1982; Order of 5 November 1982; Order of 27 July 1983; etc.

10. Following that case, several other cases for drawing a single maritime -or other- boundary were brought before the International Court of Justice or other jurisdictions. See, e.g., the Libya-Malta Continental Shelf Case, decided by the I.C.J. in 1985; the Guinea/Guinea-Bissau case, decided by a Court of Arbitration in 1985; the Guinea-Bissau/Senegal case, decided

by an Arbitration Tribunal in 1989; the St.Pierre-Miquelon Maritime Areas Dispute between Canada and France, decided by the I.C.J. in 1992; the Land, Island and Maritime Frontier Dispute between El Salvador and Honduras, decided by the I.C.J. in 1992; and the Maritime Delimitation (Greenland/Jan Mayen) case between Denmark and Norway, decided by the I.C.J. in 1993.

There are also some other cases still pending before the I.C.J. See, e.g., the Guinea-Bissau/Senegal case; the Timor Cap Dispute between Portugal and Australia; and the Maritime Delimitation case between Qatar and Bahrain.

11. See also Nicholas M.Poulantzas, "Recent Developments Regarding the Right of Hot Pursuit in the International Law of the Sea", Revue de droit international, Geneva, 1997, No.2, at p.204, and note 61, at p.220.

12. See, e.g., the following cases: Frontier Dispute case (Burkina Faso v.Mali, decided by a Chamber of the I.C.J. in 1985; the Land, Island and Maritime Frontier Dispute (El Salvador v.Honduras), decided by a Chamber of the I.C.J. in 1987; and the Elettronica Sicula S.p.A. (ELSI) case, decided by a Chamber of the I.C.J. in 1989.

13. See Dion.M.Poulantzas, "The Chambers of the International Court of Justice and Their Role in the Settlement of Disputes Arising Out of Space Activities", op.cit., p.127 ff.

14. This is, for instance, the case in the Falkland/Malvinas islands crisis, when a speedy solution of the dispute between the Governments of the United Kingdom and Argentina, at that time, could have averted the armed conflict between the two nations.

15. Thus, the reservations expressed in the past by the late Judge A.Alvarez have not proven justified (Le droit international nouveau, Paris, 1959, p.599). Judge Alvarez, namely, contended that "the judgments by the Chambers in the eyes of public opinion have only less value since they do not express the opinion of all the judges and consequently they cannot create a judicial precedent like the decisions rendered by all members of the Court" (translation by the present writer).

16. See Articles 186-191 of the Convention, as well as Part XV of the Convention, which deals with the "Settlement of Disputes".

17. See Article 188 of the U.N. Law of the Sea Convention (1982), and Articles 14-15 of the Statute of the International Tribunal for the Law of the Sea.
