

Spain and the Law of the Sea: 20 years under LOSC

LOSC bodies and Spain

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(A) INTRODUCTION

The adoption and subsequent entry into force of the United Nations Convention on the Law of the Sea¹ not only meant the application of a number of provisions containing substantial and procedural rights and obligations but also the establishment and entry into function of three brand-new international institutions created *ex novo* for serving their respective and well-differentiated goals. Those institutions are the Commission on the Limits of the Continental Shelf (Article 76 and Annex II), the International Seabed Authority (Part XI, Annexes III and IV and the 1994 Implementing Agreement²) and the International Tribunal for the Law of the Sea (Annex VI).

According to the Law of the Sea Convention (LOSC), the Commission on the Limits of the Continental Shelf (CLCS) shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf when such continental shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (Article 76(8) LOSC). In particular, pursuant to its Annex II, the functions of the Commission shall be: “(a) to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with Article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea; and (b) to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data referred to in subparagraph (a)” (Article 3(1) of Annex II). For this goal, the CLCS is composed of 21 members who shall be experts in the field of geology, geophysics or hydrography, elected by States Parties to this Convention from among their nationals, having due regard to the

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¹ UN Convention on the Law of the Sea, [1833 UNTS 3](#) (adopted 10 December 1982, entered into force 16 November 1994) (LOSC hereinafter).

² Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, [1826 UNTS 3](#) (adopted 28 July 1994, entered into force, provisionally 16 November 1996 and definitively 28 July 1996).

need to ensure equitable geographical representation, and who shall serve in their personal capacities (Article 2(1) of Annex II).

For its part, the International Seabed Authority (ISBA), as established by Article 156 LOSC, is an international intergovernmental organization through which the States Parties to the Convention shall, in accordance with its Part XI (and the 1994 Implementing Agreement), organize and control activities in the Area, that is, the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction³, particularly with a view to administering the resources of that maritime space (Article 157). To fulfill its functions, the ISBA is composed of three principal organs (the Assembly, the Council and the Secretariat), such subsidiary organs as may be found necessary to accomplish its mission, and an Enterprise, “the organ through which the Authority shall carry out the functions referred to in article 170, paragraph 1” (Article 158).⁴

Finally, the International Tribunal for the Law of the Sea, whose Statute is contained in Annex VI of the LOSC, is an autonomous specialized international judicial institution composed of twenty-one independent judges elected by the Meeting of States Parties to the Convention, among specialists in the law of the sea, according to a method that intends to assure an equitable geographical representation. ITLOS has both contentious and advisory jurisdiction. As to the contentious jurisdiction, ITLOS has broad voluntary competence to deal with disputes submitted to it by the agreement of the parties. It also has compulsory jurisdiction for some specific types of disputes, such as those concerning the seabed area (assigned to its Seabed Disputes Chamber), those relating to the prompt release of arrested vessels and their crews according to the special procedure regulated by Article 292 LOSC, and, in general, those disputes concerning the interpretation or application of the Convention (neither listed in the automatic exceptions of Article 297 nor opted out by the parties through a declaration made pursuant Article 298), in respect to which the confronting parties have made a declaration electing ITLOS in conformity with its Article 287. Other significant international treaties, such as the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea Relating the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks⁵, also give some room for the compulsory jurisdiction of ITLOS. Regarding its advisory jurisdiction, it was expressly conferred by the Tribunal’s Statute (Annex VI of the Convention) only to its Seabed Disputes Chamber and only for questions

³ Art. 1(1)(1) LOSC.

⁴ According to Art. 170(1) LOSC: “The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to Art. 153, paragraph 2(a), as well as the transporting, processing and marketing of minerals recovered from the Area.” For its part, pursuant to Art. 153(2) “Activities in the Area shall be carried out (...) (a) by the Enterprise, and (b) in association with the Authority by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements provided in this Part and in Annex III.” Nevertheless, Section 2, paras. 1 and 2, of the 1994 Agreement sets up that the Secretariat of the Authority “shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat” and that the Enterprise “shall conduct its initial deep seabed mining operations through joint ventures.” To date, the ISBA Secretariat is still performing the functions of the Enterprise.

⁵ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (adopted 4 August 1995, entered into force 11 December 2001), [2167 UNTS 3](#).

concerning the seabed area. However, by means of its Rules, ITLOS included an express mention to its general advisory jurisdiction, thereby not only constrained to seabed matters, to be exercised under certain conditions.

This paper intends to summarize the practice of Spain in the three afore-mentioned international institutions.

(B) THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF (CLCS)

According to the LOSC, the coastal State shall establish the outer edge of the continental margin, wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by following the criteria established in Article 76, paragraphs 4 to 7. For this purpose, information on the limits of the continental shelf beyond 200 nautical miles shall be submitted by the coastal State to the CLCS, which shall make recommendations on the matters related to those limits (Article 76(8)). Hence, the CLCS does not have a direct mandate to establish the outer limits. The right and the power to establish the outer limits of the continental shelf belong to the coastal State. The recommendatory nature of this task is therefore an acknowledgement of the coastal State's sovereign right over this maritime space.⁶ Nevertheless, pursuant to the same provision, only those limits "established by the coastal State on the basis of [the CLCS] recommendations shall be final and binding" (Article 76(8), *in fine*) whereas limits established in contravention of such recommendations would have not the same final and compulsory nature.

Either way, even when the limits are established by coastal States on the basis of CLCS' recommendations, such delineation does not prejudice the delimitation of the continental shelves of States with opposite or adjacent coasts (Articles 76(10) LOSC and 9 of its Annex II). As the International Tribunal for the Law of the Sea affirmed in its Judgment of 14 March 2012, in the case on the *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh / Myanmar)*, "[t]here is a clear distinction between the delimitation of the continental shelf under article 83 and the delineation of its outer limits under article 76. Under the latter article, the Commission is assigned the function of making recommendations to coastal States on matters relating to the establishment of the outer limits of the continental shelf, but it does so without prejudice to delimitation of maritime boundaries."⁷

States intending to establish the outer limits of their continental shelves should submit to the CLCS particulars of such limits, along with supporting scientific and technical data, as soon as possible but in any case within ten years of the entry into force of the LOSC for those States (Article 4 Annex II LOSC). Nevertheless, after noting, *inter alia*, that it was only since the adoption by the

⁶ Suzette V. Suarez, "Commission on the Limits of the Continental Shelf", 14 *Max Planck Yearbook of United Nations Law* (2010), 131-168.

⁷ Para. 376. As ITLOS recalls: "Just as the functions of the Commission are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts, so the exercise by international courts and tribunals of their jurisdiction regarding the delimitation of maritime boundaries, including that of the continental shelf, is without prejudice to the exercise by the Commission of its functions on matters related to the delineation of the outer limits of the continental shelf" (para. 379).

Commission of its Scientific and Technical Guidelines, on 13 May 1999, that States had before them the basic documents concerning submissions in accordance with Article 76, paragraph 8, of the Convention, and considering the problems encountered by States Parties, in particular developing countries, including small island developing States, in complying with the afore-mentioned time limit, the Meeting of States Parties to the LOSC decided that, in the cases of States Parties for which the Convention entered into force before 13 May 1999, it would be understood that the ten-year time period should be taken to have commenced on the said date of 13 May 1999.⁸

Additionally, subsequent practice of the Meeting of States Parties to the LOSC, has allowed to extend this deadline even further, insofar as it has been understood that the ten-year time period may be satisfied by submitting to the Secretary-General preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of Article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission⁹. Moreover, in view of the possibility for coastal States to have disputes on the delimitation of their respective continental shelves, it has also been permitted to submit partial submissions instead of a unique and global submission. Particularly, pursuant to the Rules of Procedure of the CLCS: “A submission may be made by a coastal State for a portion of its continental shelf in order not to prejudice questions relating to the delimitation of boundaries between States in any other portion or portions of the continental shelf for which a submission may be made later, notwithstanding the provisions regarding the ten-year period established by article 4 of Annex II to the Convention” (Annex I, para. 3).

Pursuant to this set of provisions and rules, and within the ten-year time limit applicable to it, expiring on 13 May 2009, Spain has made three partial submissions regarding its continental shelf in the areas of the Celtic Sea and the Bay of Biscay (Submission 6) of Galicia (Submission 47) and in the area west of the Canary Islands (Submission 77).¹⁰

(1) Submission n°. 6. Bay of Biscay and Celtic Sea

Pursuant to Article 76(4) LOSC, and Article 4 of its Annex II, on 19 May 2006, France, Ireland, Spain and the United Kingdom, all of them States Parties to the LOSC,¹¹ submitted to the CLCS, through the Secretary-General of the United Nations, a partial Joint Submission made by these States

⁸ Doc. SPLOS/72, 29 May 2001, para. (a).

⁹ Doc. SPLOS/183, 20 June 2008, para. 1.a. Rules of Procedure of the CLCS are contained in Doc. CLCS/40/Rev.1, of 17 April 2008. Scientific and Technical Guidelines of the Commission are contained in Doc. CLCS/11, of 13 May 1999, as corrected by CLCS/11/Corr.1 (24 February 2000), CLCS/11/Corr.2 (17 May 2000), plus CLCS/11/Add.1, of 3 September 1999, as corrected by Doc. CLCS/11/Add.1/Corr.1 (19 November 1999). All these documents are available [here](http://dx.doi.org/10.17103/redi.68.1.2016.4a.01).

¹⁰ On the Spanish Submissions and, in particular, that regarding the Canary Islands, see: J. Martín y Pérez de Nanclares, “Plataforma continental ampliada al oeste de las Islas Canarias: Presentación española ante la Comisión de Límites de las Plataforma Continental”, 68 *Revista Española de Derecho Internacional* (2016), 219-226 [doi: <http://dx.doi.org/10.17103/redi.68.1.2016.4a.01>].

¹¹ The Convention entered into force for France on 11 May 1996, for Ireland on 21 July 1996, for Spain on 14 February 1997 and for the United Kingdom on 24 August 1997. As regards Spain, see Instrument of Ratification of the United Nations Convention on the Law of the Sea, done in Montego Bay on December 10, 1982 (BOE No. 39, 14 February 1997).

in respect of the Celtic Sea and the Bay of Biscay.¹²

The Joint Submission was presented by the four States through *notes verbales* in which they stated that “[t]he enclosed submission is of a joint nature, comprising a single project prepared collectively and collaboratively by the four coastal States. For each of these four coastal States the enclosed joint submission represents a partial submission in respect of a portion only of the outer limits of the continental shelf appurtenant to all four coastal States that lie beyond 200 nautical miles from their baselines from which the breadth of their respective territorial seas are measured.” In addition, after affirming that “[t]his portion of shelf is not the subject of any dispute”, the notes verbales also stated that in order not to prejudice unresolved questions relating to the delimitation of boundaries between France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland and some of their neighbours in other portions of the continental shelf appurtenant to [those four States], submissions for those portions shall be made at a later date”.¹³

According to the Rules of Procedure of the CLCS, the UN Secretary-General circulated the information concerning the Joint Submission to all Member States of the United Nations as well as the States Parties to the LOSC¹⁴ and the Submission was included in the CLCS Agenda. In particular, it was included in its eighteen session¹⁵, where the four interested States made their formal and oral presentations and responded to the questions asked by the CLCS members.¹⁶ Further, pursuant to Article 5 of Annex II of the Convention and to the Rules of Procedure¹⁷, the Joint Submission was addressed to a Sub-commission, established for this purpose, which initially met three times with the delegations of the four coastal States to raise questions and receive further clarifications.¹⁸ In addition, meetings were also held between the Sub-commission and the four coastal States during the twenty-first¹⁹ and the twenty-second²⁰ plenary sessions of the CLCS to deal with the considerations made by the Sub-commission on the original outer limit as submitted. As a consequence of these previous exchange of views, and subsequently, before proceeding with its recommendations to the Commission, the Sub-commission offered the four coastal States the option of either revising the outer limit, taking into consideration the Sub-commission’s view, or maintaining their original view. In this respect, after giving due consideration to the views of the Sub-commission, and in the interest of the timely

¹² *Summary of the Recommendations of the Commission on the Limits of the Continental Shelf in Regard to the Joint Submission made by France, Ireland, Spain, and The United Kingdom of Great Britain and Northern Ireland in Respect of the Area of the Celtic Sea and the Bay of Biscay on 19 May 2006*, para. 1.

¹³ *Id.*, para. 2. See also the *Joint Submission to the Commission on the Limits of the Continental Shelf pursuant to Art. 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in respect of the area of the Celtic Sea and the Bay of Biscay, Part I (Executive Summary)*, in which a map and the coordinates of the area are included.

¹⁴ See United Nations Secretary-General, doc. CLCS.06.2006.LOS (Continental Shelf Notification) n°. 06/150, of 19 May 2006 (Receipt of the Joint Submission made by France, Ireland, Spain, and The United Kingdom of Great Britain and Northern Ireland to the Commission on the Limits of the Continental Shelf).

¹⁵ UN Headquarters, New York, 21 August to 15 September 2006 (Doc. CLCS/52, 6 October 2006, para.1).

¹⁶ The presentations and questions were made on 22 August 2006 (Doc. CLCS/52, cit., paras. 26 and 28).

¹⁷ Rule 42.

¹⁸ Doc. CLCS/52, cit., para. 33. According to this document (para.34), an additional resumed-session was needed for considering the Submission (22 January-2 February 2007).

¹⁹ UN Headquarters, New York, 17 March to 18 April 2008 (Doc. CLCS/58, 25 April 2008, paras. 19 to 23).

²⁰ UN Headquarters, New York, 11 August to 12 September 2008 (Doc. CLCS/60, 26 September 2008, paras. 12 to 14).

completion of the examination of the joint submission, the four coastal States decided to accept the first option, without prejudice to this or any other future submission. Thereafter, they presented a revised outer limit to the Sub-commission, which accepted it.²¹

Finally, during the twenty-third session of the CLCS²², the Joint Submission entered into its decisive stage. After the Sub-commission prepared a draft of its recommendations²³ and submitted it to the plenary of the Commission,²⁴ the Commission held a meeting with the delegations of the four coastal States, at their request, on 24 March 2009.²⁵ Then, following their presentations, the Commission adopted the “Recommendations of the Commission on the Limits of the Continental Shelf in regard to the joint submission made by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland in respect of the area of the Celtic Sea and the Bay of Biscay on 19 May 2006” by consensus.²⁶ Nevertheless, as the internal delimitation between the four coastal States of their respective continental shelves in this area is still pending and subject to negotiations, they have not yet proceeded to the establishment of the outer limits of their corresponding continental shelves on the basis of the said Recommendations.

(2) Submission n° 47. Galicia

Again, pursuant to Article 76 and Annex II of the LOSC, on 11 May 2009 Spain submitted to the CLCS, through the Secretary-General of the United Nations, a second partial Submission concerning the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured in respect of the area of Galicia.²⁷

In this second partial Submission, Spain notes that it deals only with the outer limits of the continental shelf in the Galicia area, which is bounded to the north by a Fixed Point, defined in the joint partial Submission made by Spain, France, Ireland and the United Kingdom (FISU), in the Bay of Biscay and the Celtic Sea, and to the south by a Fixed Point situated on the southern edge of the Area of Common Interest (ACI) defined by Spain and Portugal by common agreement.²⁸ In this respect, after stating that the area of the continental shelf to which its partial Submission refers is not the subject of any dispute with any other coastal State or States, nor does it prejudice matters relating to the delimitation of boundaries between States²⁹, Spain informs the CLCS that its partial Submission does not prejudice the delimitation of the outer limits of the continental shelf resulting

²¹ Doc. CLCS/62, 20 April 2009, para. 13.

²² UN Headquarters, New York, 2 March to 9 April 2009 (Doc. CLCS/62, 20 April 2009, paras. 8 to 14).

²³ Doc. CLCS/62, cit., para. 8.

²⁴ Doc. CLCS/62, cit., paras 9 and 10.

²⁵ Doc. CLCS/62, cit., para. 11.

²⁶ Doc. CLCS/62, cit., para. 14.

²⁷ United Nations Secretary-General, doc. CLCS.47.2009.LOS (Continental Shelf Notification) of 14 May 2009 (Receipt of the Submission made by the Kingdom of Spain to the Commission on the Limits of the Continental Shelf). See also *The Continental Shelf of Spain. Partial Submission on the limits of the Spanish Continental Shelf pursuant to Art. 76 and Annex II of the United Nations Convention on the Law of the Sea in respect of the area of Galicia*, para 1.1.

²⁸ *The Continental Shelf of Spain. Partial Submission*, cit. para. 2.1.

²⁹ *The Continental Shelf of Spain. Partial Submission*, cit. para. 5.1.

from the joint partial Submission by Spain, France, Ireland and the United Kingdom³⁰ and that, for the exclusive purpose of defining the outer limits of the continental shelf beyond 200 nautical miles in the area of the Galicia Bank, Spain and Portugal have agreed to identify an Area of Common Interest (ACI) for both coastal States.³¹ Particularly, as Spain affirmed in its Submission, even though each of these coastal States presented a separate Submission to the Commission, within the ACI, the outer limits of the extended continental shelf have been established by Spain and Portugal acting in coordination and in accordance with common information, scientific and technical data, and criteria.³² In addition, Spanish Submission also informs that Spain and Portugal have agreed that the aforesaid delimitation does not prejudice the lateral delimitation of the continental shelf between both coastal States, which shall be resolved in the future and by common agreement between both Parties, in accordance with the applicable rules and principles of international law.³³

As it occurred with Submission n° 6, the UN Secretary-General circulated the information concerning this Submission n° 47 to all Member States of the United Nations as well as the States Parties to the LOSC and the Submission was included in the agenda of the CLCS for its twenty-fifth session.³⁴ Namely, the presentation of the Submission to the Commission by the Spanish delegation was made on 7 April 2010. In addition to the explanation of the substantive points, it was reiterated the absence of disputes related to the Submission, the agreement between Spain and Portugal regarding the establishment of a common interest area and that the delimitation of the extended continental shelf in the common interest area was without prejudice to issues related to the establishment of boundaries between the two States.³⁵

Pursuant to Article 5 of Annex II of the Convention and to the Rules of Procedure, the CLCS decided to address the Submission to a Sub-commission to be formed for this purpose. In this case, the Commission decided to revert to the consideration of the Submission at the plenary level when the Submission was next in line for consideration as queued in the order in which it was received.³⁶ The Submission is still under consideration by the Sub-commission.

Supposedly, as both Spain and Portugal had introduced Submissions on their respective extended continental shelves including the afore-mentioned Area of Common Interest, and as the Portuguese submission was prior to the Spanish one,³⁷ the treatment of this area by the corresponding sub-

³⁰ *The Continental Shelf of Spain. Partial Submission*, cit. para. 5.2. According to its Submission, the ACI is defined to the north by parallel 41° 52' N, to the south by parallel 40° 34' 13" N, to the east by the baseline from which the breadth of the territorial sea of Spain and Portugal is measured, and to the west by a line 350 nautical miles from the aforesaid baseline.

³¹ *The Continental Shelf of Spain. Partial Submission*, cit. para. 5.3.

³² *The Continental Shelf of Spain. Partial Submission*, cit. para. 5.4. In fact, both States presented their Submissions in the same date (11 May 2009).

³³ *The Continental Shelf of Spain. Partial Submission*, cit. para. 5.6.

³⁴ United Nations Secretary-General, doc. CLCS.47.2009.LOS (Continental Shelf Notification) of 14 May 2009 (Receipt of the Submission made by the Kingdom of Spain to the Commission on the Limits of the Continental Shelf). Twenty-fifth session of the CLCS was held in the UN Headquarters in New York, from 15 March to 23 April 2010 (Doc. CLCS/66, 30 April 2010, para.1).

³⁵ Doc. CLCS/66, cit., para. 69.

³⁶ Doc. CLCS/66, cit., para. 70.

³⁷ Despite they presented their Submissions on the same date, Portuguese one was marked as n° 44 and the Spanish with n° 47.

commission and, subsequently, the own CLCS, in respect to the Submission of Portugal, might be ready even when the Spanish Submission would be under consideration. However, the recent Submission by Portugal, on the last 22 August 2017, of an Amended Executive Summary to its original Submission, which, according to that State, replaces the entire Submission made by the Portuguese Republic on 11 May 2009³⁸, may postpone the treatment of such Submission to a date latter than that corresponding to the Spanish one. In this respect, even when the amended Submission introduces significant changes in the so-called Western Region (comprising the legal continental margin of the Azores Archipelago), which mean a remarkable enlargement of the Portuguese outer limits in that region, it apparently does not overlap with the Spanish Submission concerning Galicia. On the other hand, as regards the ACI, the Amended Submission expressly states that “[f]or the Galicia Bank Region, Portugal did neither collect any new data nor perform any new computations; accordingly, the OECM segment common and agreed by Portugal and Spain and the OLCS contour in the Area of Common Interest (ACI) remains as in the 2009 Submission.”³⁹

(3) Submission n° 77. Canary Islands

Finally, once more in accordance with Article 76 and Annex II of the LOSC, on 17 September 2014, Spain submitted to the CLCS, through the Secretary-General of the United Nations, its third partial Submission, this time in respect to the area west of the Canary Islands.⁴⁰ In order to fulfil with the afore-mentioned ten-year time limit, expiring for Spain on 13 May 2009, this Submission had been preceded by another one, presented by this country to the CLCS on 11 May 2009, containing preliminary information on the outer limits beyond 200 miles of the continental shelf in the described area, a description of the state of preparation of the future partial Submission and an indication on the planned date for such submission.⁴¹

As it occurred with its Submission concerning the area of Galicia, Spain affirmed in this third and again partial Submission that it refers solely to the outer limits of the continental shelf in the area to the West of the Canary Islands⁴² and informed the CLCS that the concerned area is not the subject of any dispute with any other coastal State or States, nor does it prejudice matters relating to the

³⁸ See United Nations Secretary-General, doc. CLCS.44.2009.LOS.Add 1 (Continental Shelf Notification), of 1 September 2017 (Receipt of Amended Executive Summary and Addendum to the Submission made by the Portuguese Republic to the Commission on the Limits of the Continental Shelf).

³⁹ *Continental Shelf Submission of Portugal. Pursuant to Art. 76, paragraph 8 of the United Nations Convention on the Law of the Sea (2017 update)*, p. 4.

⁴⁰ UN Secretary-General, doc. CLCS.77.2014.LOS (Continental Shelf Notification) of 17 December 2014 (Receipt of the Submission made by the Kingdom of Spain to the Commission on the Limits of the Continental Shelf).

⁴¹ Doc. CLCS.77.2014.LOS, cit. See also *Partial Submission of Data and Information on the Limits of the Continental Shelf of Spain to the West of the Canary Islands, pursuant to Part VI and Annex II of United Nations Convention on the Law of the Sea (Part I. Executive Summary)*, paras. 1-2 and 1-3. The preliminary information and description presented by Spain on 11 May 2009 (*Información Preliminar y Descripción del Estado de Preparación, de conformidad con la decisión SPLOS/183, de la Presentación parcial relativa a los límites exteriores de la Plataforma Continental de España en el área al Oeste de las Islas Canarias*) is available [here](#).

⁴² *Partial Submission of Data and Information on the Limits of the Continental Shelf of Spain to the West of the Canary Islands*, cit. para. 2-1.

delimitation of boundaries between States⁴³. Further, the submitting State also informed the Commission that its partial submission neither prejudices nor prejudices the fixing of the outer limits of the continental shelf resulting from Portugal's Submission, nor the rights of third parties which may be claimed in the future.⁴⁴

Similar to previous Submissions, once received the UN Secretary-General circulated the information concerning this Submission to the United Nations Member States and to the States Parties to the LOSC.⁴⁵ The Submission was included in the agenda of the CLCS for its thirty-eight session.⁴⁶ This time, the presentation before the CLCS was carried out by the Spanish delegation on 26 August 2016. In addition to its elaboration on substantive points, Spanish representatives stated that the area of continental shelf covered by the Submission was not subject to any dispute, notwithstanding the fact that some of its parts were the subject of overlapping claims. In particular, further clarification was offered by Spain on its position in respect to the communications presented by Portugal and Morocco regarding the Spanish Submission in the afore-said area.⁴⁷

Eventually, as it occurred with the Submission concerning the area west of Galicia, the CLCS decided to address this Submission to a Sub-commission to be formed for this purpose and to revert to its consideration, along with the consideration of communications from Portugal and Morocco, as well as of any future relevant developments, at the plenary level, when such Submission is next in line for consideration, as queued in the order in which it was received.⁴⁸

(C) INTERNATIONAL SEABED AUTHORITY.

In contrast to its activity regarding the Commission on the Limits of the Continental Shelf, described above, and to that concerning the International Tribunal for the Law of the Sea, to be explained in the next section, the Spanish activity in respect to the International Seabed Authority (ISBA) is slim.

Spain is one of the 44 States Parties to the Protocol on the Privileges and Immunities of the International Seabed Authority, adopted by consensus at the fifty-fourth meeting of the Assembly of this international organization on 26 March 1998⁴⁹, and has some participation in its organs. For example, it has presided the Assembly in 2010 and is currently one of the States Members of the ISBA Council.⁵⁰

⁴³ *Ibid.*, para. 5-1.

⁴⁴ *Ibid.*, para. 5-2.

⁴⁵ Doc. CLCS/77.2014.LOS, cit.

⁴⁶ Thirty-eight sessions of the CLCS was held in UN Headquarters, in New York, from 20 July to 4 September 2015 (doc. CLCS/90, 1 October 2015).

⁴⁷ Doc. CLCS/90, cit., para. 76. On the potential conflicts between Spain and both Portugal and Morocco in this area, see the contribution in this volume by de Faramiñán on the "[Continental shelf and its extension](#)".

⁴⁸ Doc. CLCS/90, cit., para. 77. Apparently, there are no significant changes in this Amended Submission as regards the points originally determined by Portugal in the area closest to that of the outer limits of the extended continental shelf of Spain in the Canary Islands.

⁴⁹ [2214 UNTS 133](#). Spain deposited its Instrument of Ratification on 9 January 2001 (BOE nº 138, 10 June 2003).

⁵⁰ The Presidency of the Assembly was assumed by the then Spanish Representative before the ISBA, Mr. Jesús Silva-Fernández. As regards the Council, Spain was elected on 21 July 2016 for a four year period beginning in 1 January 2017, subject to the understanding that it will relinquish its seat to Norway for the year 2018 and recover it for the remaining 2019

However, Spain is not among the States either sponsoring or directly developing any kind of mining activity in the marine zone under the organization and control of the ISBA.⁵¹ In this respect, despite some members of the Spanish administration expressed in 2010 the intention of being more active on the matters regarding the Area,⁵² for the moment, Spain has concentrated its efforts only in regard to deep seabed mining within the areas under its sovereignty or sovereign rights and, in particular, once established, in relation to its future extended continental shelf described above.⁵³

(D) INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

In contrast to its lack of practice before the International Seabed Authority, Spain has been more active in what concerns the International Tribunal for the Law of the Sea.

Apart from being one of the 41 States Parties to the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, adopted by the seventh Meeting of States Parties on 23 May 1997,⁵⁴ Spain has evidenced its trust on this international judicial institution by choosing it in its Declaration of 19 July 2002, still in force, in which it states that:

“Pursuant to article 287, paragraph 1, the Government of Spain declares that it chooses the International Tribunal for the Law of the Sea and the International Court of Justice as means for the settlement of disputes concerning the interpretation or application of the Convention.”

In addition, and regarding the judicial practice of ITLOS, Spain has been a State party in one dispute before the Hamburg Tribunal and has participated in an advisory proceeding before this court. In addition, the Spanish interests were also implicitly present in another contentious case, as we will see below.

(I) Contentious cases

The one and only case in which Spain has been party in a dispute before ITLOS so far is the *M/V Louisa (Saint Vincent and the Grenadines v. Spain)*, marked in the Tribunal’s docket as its case n° 18.

This case concerned the arrest in 2006 of the *M/V Louisa*, a vessel flying the flag of Saint Vincent and the Grenadines, on the allegation by the Spanish authorities that it was involved in activities

and 2020. (Information available at the [ISBA website](#) on 15 September 2017).

⁵¹ According to the information provided with the ISBA website, this intergovernmental organization has entered into 15-year contracts for exploration for polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts in the deep seabed with twenty seven contractors. Seventeen of these contracts are for exploration for polymetallic nodules in the Clarion-Clipperton Fracture Zone (16) and Central Indian Ocean Basin (1). There are six contracts for exploration for polymetallic sulphides in the South West Indian Ridge, Central Indian Ridge and the Mid-Atlantic Ridge and four contracts for exploration for cobalt-rich crusts in the Western Pacific Ocean.

⁵² See, in this respect, the international Seminar [Los Fondos Marinos: La Nueva frontera](#), held at the Fundación Ramón Areces in Madrid, on 26 February 2010, with the participation of the then Secretary-General of the ISBA, Mr. Nii Allotey Odunton. See, in particular, the speech by Ambassador Silva-Fernández, the then Representative of Spain before the ISBA and latter appointed the President of the Assembly of the said international organization.

⁵³ See, *inter alia*, the article in Spanish newspaper ABC by José L. Jiménez, “[España se suma a la fiebre de la minería submarina](#)”, of 22 April 2017.

⁵⁴ [2167 UNTS 271](#). Spain deposited its Instrument of Accession on 9 January 2001 (BOE n°. 15, 17 January 2002).

against the underwater cultural heritage of Spain. The vessel was immobilized by order of the Spanish judicial authorities. The case was brought before the Tribunal by means of an application filed by Saint Vincent and the Grenadines against Spain upon the basis of the mutual election of ITLOS, by the two states concerned, in their respective declarations made pursuant to Article 287 of UNCLOS.⁵⁵

The Saint Vincent's Application, filed on 23 November 2010, also included a Request for provisional measures in which the applicant asked ITLOS for the release of the vessel. In its Order of 23 December 2010, while deciding not to take any measure for the moment, the Tribunal found that it was *prima facie* competent to entertain the case. However, four of its most prominent judges, namely Wolfrum, Treves, Cot, and Golitsyn, voted against this finding and held that ITLOS did not have jurisdiction for this dispute. It was not surprising, then, that ITLOS finally found in its Judgment of 28 May 2013 that it lacked jurisdiction to deal with the merits of this case, even after declaring its *prima facie* jurisdiction in the provisional measures proceedings and despite the declarations made by both parties in the dispute. In regard to the former, the Tribunal recalled that the question of the jurisdiction to deal with the merits of the case 'can be decided only after consideration of the written and oral proceedings'⁵⁶ and not only on the *prima facie* analysis that is made in the provisional measures phase. As to the effect of the declarations made by the parties pursuant to Article 287 of UNCLOS, it is also necessary that the provisions invoked as the basis for the competence of the Tribunal fall under its compulsory jurisdiction. In this respect, after analysing in detail the numerous provisions invoked by the applicant as a possible basis for its jurisdiction,⁵⁷ and the objections raised by the respondent (Spain), ITLOS reached the conclusion that "no dispute concerning the interpretation or application of the Convention existed between the Parties at the time of the filing of the Application and that, therefore, it [had] no jurisdiction *ratione materiae* to entertain the present case".⁵⁸

(2) Advisory cases

Apart from the said contentious case, Spain has also been present in the *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, which was submitted to its Plenary and marked as case n° 21.

According to Article 33 of the Convention on the Determination of the Minimal Conditions for Access and Exploitation of Marine Resources within the Maritime Areas under Jurisdiction of the Member States of the Sub-Regional Fisheries Commission (SRFC), the Conference of Ministers of the SRFC authorized its Permanent Secretary to bring before ITLOS several questions on the

⁵⁵ The Spanish Declaration is reproduced in this page. As to the Declaration by Saint Vincent and the Grenadines, it states the following: "In accordance with Art. 287, of the 1982 United Nations Convention on the Law of the Sea of 10 December 1982, ... the Government of Saint Vincent and the Grenadines declares that it chooses the International Tribunal for the Law of the Sea established in accordance with Annex VI, as the means of settlement of disputes concerning the arrest or detention of its vessels."

⁵⁶ Judgment, para. 92.

⁵⁷ Arts. 73, 87, 226, 227 and 303, alleged in time, plus Art. 303, alleged untimely after the closure of the written proceedings (Judgment of 28 May 2013, paras. 96 ss.).

⁵⁸ Judgment, para. 151 and operative para. (n. 160).

obligations and liability of flag States in cases where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zones of third party States⁵⁹.

By its Order of 24 May 2013, and pursuant to Article 133(3) of its Rules, the Tribunal invited the States Parties to the Convention, the SRFC and other organizations referred in the Order⁶⁰ to present written statements on the questions submitted to the Tribunal for its advisory opinion. In this respect, and besides the discussion on the merits, a lengthy discussion was also held on the jurisdiction of ITLOS to deal with them. Spain participated actively in this second discussion on the Tribunal's competence.⁶¹

As it is well known, this case meant the first time in which an advisory opinion was requested to the plenary of ITLOS. Regarding advisory jurisdiction, express mention is only made by the LOSC in respect to its Seabed Disputes Chamber (SDC),⁶² not to the ITLOS full court, and to deal solely with requests for advisory opinions concerning the seabed area, not on general issues. However, going beyond that limited scope, in a somehow "audacious" movement, ITLOS on its own added, to the original draft of its Rules, its current Article 138, according to which the Tribunal itself (not only its SDC) "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." ITLOS approved its Rules (Article 16 Annex VI LOSC) on 28 October 1997. When this text was presented to the Eight Meeting of the States Parties of the LOSC, on May 1998, no objection was raised nor has it been posed in its nearly twenty years since its adoption.⁶³

During the proceedings, several States, including Spain, expressed their opinions against the jurisdiction of ITLOS for entertaining the request. In this respect, it was put into question both the general empowerment conferred upon ITLOS' full court to give advisory opinions and the jurisdiction of ITLOS to give its advisory opinion on the specific issues posed by the Request. In particular, as to the Spanish view, the main arguments against the Tribunal's advisory jurisdiction could be summarized as follows:

Concerning the general jurisdiction of ITLOS' full court to deal with requests for advisory opinions, as envisaged in Article 138 of its Rules, Spain held that, according to the principle of conferral of competences, international organizations and institutions have no general competence but the special or functional powers that States have invested in them. In this respect, according to Spain,

⁵⁹ In particular, the questions were the following: "1. What are the obligations of the flag State in cases where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zones of third party States? 2. To what extent shall the flag State be held liable for IUU fishing activities conducted by vessels sailing under its flag? 3. Where a fishing license is issued to a vessel within the framework of an international agreement with the flag State or with an international agency, shall the State or international agency be held liable for the violation of the fisheries legislation of the coastal State by the vessel in question? 4. What are the rights and obligations of the coastal State in ensuring the sustainable management of shared stocks and stocks of common interest, especially the small pelagic species and tuna?"

⁶⁰ See Annex to the Order.

⁶¹ As regards the merits, Spain stated that it "[did] not submit any considerations to the Tribunal regarding the substance of the questions asked to it in the request for its advisory opinion" (Written Statement by the Kingdom of Spain, 29 November 2013, para. 32)

⁶² In line with such express empowerment, on 1 February 2011, the SDC delivered its Advisory Opinion on the *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*.

⁶³ See docs. SPLOS/27, of 23 April 1998 (paras. 42-48), and SPLOS/31, of 4 June 1998 (paras. 9-14).

“neither the Convention nor the Statute [of ITLOS] confers on the Tribunal an advisory jurisdiction of a general character”.⁶⁴ In lack of such express conferral, Spain considered that the doctrine of implicit powers could not be applied, as “the advisory jurisdiction is not inherent to the function of a judicial body and thus it has to be transferred expressly to a court or tribunal, as confirmed by the institutional practice”.⁶⁵ In addition, neither Article 288(2) of the LOSC nor 21 of its Annex VI (Statute of ITLOS) serve as a basis for a general advisory jurisdiction of the Tribunal under the LOSC.⁶⁶ Finally, according to the Spanish delegation, in the absence of an express conferral by the LOSC, Article 138 of ITLOS’ Rules cannot fulfil this function. In summarizing the Spanish view, Article 138 of the Rules cannot be an autonomous basis for conferring general advisory jurisdiction to the Tribunal because it is not an international agreement nor can it serve as the basis for other international agreements related to the purposes of the Convention to confer by themselves (without the LOSC) special advisory jurisdiction to ITLOS, as it might be the case with the request by the SRFC.⁶⁷

On the other hand, Spain also held that, in case that ITLOS found that it had general advisory jurisdiction as objected, it would nevertheless be inappropriate to exercise the power to give an advisory opinion in the present case. Particularly, the Spanish position was that “any legal question which is or can become the object of a dispute between States (and thus would require the consent of the States to be substantiated before the Tribunal) would compromise the Tribunal’s judicial functions and extend beyond the special advisory jurisdiction expressly conferred on it by an international agreement related to the purposes of the Convention (and which, by virtue of that international agreement, is limited to its substance and can only affect rights and duties of States parties to the agreement).”⁶⁸ In this regard, according to the Spanish view “[I]n the request for an advisory opinion made by the SRFC, the nature of the questions posed is of a wide enough nature as to give rise to controversies between the States, or between a State and an international organisation”, thus making them “inadequate to be answered by the Tribunal”.⁶⁹

Both types of arguments, raised by Spain and other States, were refused by the Plenary of ITLOS, which considered that its advisory jurisdiction relies not on its Rules but on its own Statute, Article 21, when it confers jurisdiction to this institution not only for dealing with “disputes” but also for entertaining “all matters” specifically provided for in any other agreement [different from UNCLOS]

⁶⁴ Written Statement by the Kingdom of Spain, cit., para. 8.

⁶⁵ Written Statement by the Kingdom of Spain, cit., paras. 5-6. In support of its statement, Spain quotes the examples of other international tribunals having advisory jurisdiction, whose power has been always conferred upon them expressly, such as the Permanent Court of International Justice (Art. 14 of the Covenant of the League of Nations), the International Court of Justice (Art. 96 of the UN Charter), the European Court of Human Rights (Arts. 47 and 48 of the European Convention on Human Rights and Protocol 16 to the Convention) the Inter-American Court of Human Rights (Art. 64 of the San José Convention) the African Court of the Human and Peoples’ Rights (Art. 4 of the Protocol to the African Charter of Human and Peoples’ Rights on the Establishment of the African Court of Human and Peoples’ Rights), the Court of Justice of the European Union (Art. 218 of the TFEU) and the Court of Justice of the Economic Community of West African States (Art. 10 of the Protocol of the Community Court of Justice).

⁶⁶ Written Statement by the Kingdom of Spain, cit., paras. 9 - 11.

⁶⁷ Written Statement by the Kingdom of Spain, cit., paras. 13 - 23.

⁶⁸ Written Statement by the Kingdom of Spain, cit., para. 30.

⁶⁹ Written Statement by the Kingdom of Spain, cit., para. 31.

conferring jurisdiction upon it.⁷⁰ ITLOS also found appropriate to exercise its jurisdiction to give an advisory opinion in the present case.⁷¹

(3) Other activity before ITLOS

Setting aside the afore-mentioned cases, Spain has had no direct participation in other cases before ITLOS. Nevertheless, it worth's mentioning that the Spanish State's interests were also implicitly present in the case n° 7, concerning the *Conservation and Sustainable Exploitation of Swordfish Stocks in the South-East Pacific Ocean (Chile/European Union)*, in which the fishing vessels and companies affected by the restrictive measures approved by Chile were mostly of Spanish nationality. In this case, as Spain was not a party to the dispute, the concerns of Spain were expressed and treated within the European Union institutions. A different situation is that of prompt release cases n° 5 (*Camouco (Panama v. France)*),⁷² 6 (*Monte Confurco (Seychelles v. France)*),⁷³ 8 (*Grand Prince (Belice v. France)*)⁷⁴ and 11 (*Volga (Russian Federation v. Australia)*)⁷⁵, in which Spanish nationals were involved, insofar as the Spanish State adopted, in regard to such nationals, a remarkable detachment in coherence with the official position of Spain as regards IUU fishing.⁷⁶

(E) CONCLUDING REMARKS

As seen in pages above, the practice of Spain before the three institutions created by the LOSC, namely, the CLCS, the ISBA and ITLOS, has been remarkable as regards the first and the third, and slim in what concerns the second.

Spain has submitted to the CLCS three partial Submissions concerning the outer limits of its continental shelf in the areas of the Celtic Sea and the Bay of Biscay (Submission 6, jointly submitted with France, Ireland and the United Kingdom) of Galicia (Submission 47) and of the area west of the Canary Islands (Submission 77). Submission 6 was subject to Recommendations by the CLCS and the two remaining ones are still under consideration by this international institution.

For its part, Spain, which is a State Party to the Agreement on the Privileges and Immunities of ITLOS, adopted on 23 May 1997, and which has evidenced its trust on this international judicial institution by choosing it, along with the International Court of Justice, in its Declaration of 19 July 2002, made pursuant to Article 287 of the LOSC, has also been a party in a dispute submitted to ITLOS, the *M/V Louisa* case, (case n° 18) and has participated actively in the discussion on the jurisdiction of ITLOS' full court to give an advisory opinion in the context of the *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC)* (case n° 21).

In contrast to this activity before the CLCS and ITLOS, the practice of Spain regarding the ISBA

⁷⁰ See Advisory Opinion, 2 April 2015, paras. 37 - 69.

⁷¹ See Advisory Opinion, cit., paras. 70 - 79. As to the substantive aspects of the request, see the Advisory Opinion, para. 219, points 3 to 6.

⁷² See Judgment of 7 February 2000, para. 27.

⁷³ See Judgment of 18 December 2000, para. 28.

⁷⁴ See Judgment of 20 April 2001, paras. 32 - 34.

⁷⁵ See Judgment of 22 December 2002, para. 38.

⁷⁶ On this question, see the contribution in this volume by Pons Rafols on "[IUU fishing](#)".

is remarkably shorter. In this respect, Spain is a Party to the Protocol on the Privileges and Immunities of the International Seabed Authority, adopted on 26 March 1998, and has some participation in its organs, but is not among the States either sponsoring or directly developing any kind of mining activity in the marine zone under the organization and control of the ISBA.