

CONTENTIOUS PROCEEDINGS BEFORE THE SEABED DISPUTES CHAMBER

Relevant provisions
<ul style="list-style-type: none">• Part XI, Section 5, of the Convention• Articles 14, 17, 35 to 40 of the Statute• Articles 115 to 123 of the Rules

I. SUBMISSION OF A DISPUTE TO THE SEABED DISPUTES CHAMBER

Who has access to the Seabed Disputes Chamber?

Depending on the type of dispute involved, the Seabed Disputes Chamber is open to States Parties to the Convention, the Authority, the Enterprise, state enterprises and state-sponsored natural or legal persons carrying out activities in the Area (Convention, article 187; Statute, article 37)

What is the scope of the jurisdiction of the Seabed Disputes Chamber?

The Seabed Disputes Chamber is entrusted with jurisdiction under Part XI, section 5, of the Convention over disputes concerning the exploration and exploitation of the seabed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction (the "Area"), falling within the categories referred to in article 187, subparagraphs (a) to (f), of the Convention. A declaration made under article 287, paragraph 1, of the Convention does not affect the obligation of a State Party to accept the jurisdiction of the Seabed Disputes Chamber in the manner provided for in Part XI, section 5, of the Convention (Convention, article 287, paragraph 2).

What type of disputes can be submitted to the Seabed Disputes Chamber?

Disputes with respect to activities in the Area falling within the following categories can be submitted to the Seabed Disputes Chamber (Convention, article 187):

- Disputes between States Parties concerning the interpretation or application of Part XI of the Convention and the Annexes relating thereto (Convention, article 187, paragraph (a));
- Disputes between a State Party and the Authority concerning (a) acts or omissions of the Authority or of a State Party alleged to be in violation of Part XI or its annexes or of rules, regulations and procedures of the Authority; and (b) acts of the Authority alleged to be in excess of jurisdiction or a misuse of power (Convention, article 187, paragraph (b));
- Disputes between parties to a contract, being States Parties, the Authority or the Enterprise, state enterprises and natural or legal persons and natural or legal persons referred to in article 153, paragraph 2(b), concerning (a) the interpretation or application of a relevant contract or a plan of work; or (b) acts or omissions of a party

- to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests (Convention, article 187, paragraph (c));
- Disputes between the Authority and a prospective contractor concerning the refusal of a contract or a legal issue arising in the negotiation of the contract (Convention, article 187, paragraph 1(d));
 - Disputes between the Authority and a State Party, a state enterprise or a natural or legal person, where it is alleged that the Authority has incurred liability as provided for in Annex III, article 22, of the Convention, which deals with “responsibility or liability for any damage arising out of wrongful acts in the exercise of its [the Authority’s] powers and functions” (Convention, article 187, paragraph 1(d)); and
 - Any other disputes for which the jurisdiction of the Chamber is specifically provided in the Convention (Convention, article 187, paragraph (f)).

Can disputes alternatively be submitted to an *ad hoc* chamber of the Seabed Disputes Chamber or a special chamber of the Tribunal?

Disputes between States Parties concerning the interpretation or application of Part XI of the Convention and the Annexes relating thereto (Convention, article 187, paragraph (a)) can, at the request of one party, be submitted to an *ad hoc* chamber consisting of three members of the Seabed Disputes Chamber, or, at the request of all parties, be submitted to a special chamber of the Tribunal (Convention, article 188, paragraph 1; Statute, articles 15, 17, 36).

Can disputes alternatively be submitted to commercial arbitration?

Disputes concerning the interpretation or application of a relevant contract shall be submitted, at the request of any party to the contract, to binding commercial arbitration, unless the parties otherwise agree. However, the arbitral tribunal will not have jurisdiction to decide any question of interpretation of the Convention. If a dispute concerning a relevant contract, which has been submitted to commercial arbitration, also involves a question of the interpretation of Part XI and the Annexes relating thereto, with respect to activities in the Area, that question must be referred to the Seabed Disputes Chamber for a ruling (Convention, article 188, paragraph 2; Rules, article 123).

Are there limitations on the jurisdiction of the Seabed Disputes Chamber?

The Seabed Disputes Chamber cannot rule on the exercise by the Authority of its discretionary powers in accordance with Part XI and cannot substitute its discretion for that of the Authority. It also cannot give a ruling on the question as to whether any rules, regulations and procedures of the Authority are in conformity with the Convention, nor can it declare invalid any such rules, regulations and procedures (Convention, Article 189).

What procedure applies before the Seabed Disputes Chamber?

In disputes between States Parties or between States Parties and the Authority, the procedure to be applied by the Seabed Disputes Chamber is the same as in cases before the

Tribunal sitting as a whole (Rules, article 115). Different procedural rules apply to all other disputes before the Seabed Disputes Chamber (Rules, article 116). These rules provide for the speedy dispatch of cases to which the Enterprise, state enterprises, natural or legal persons, or prospective contractors are a party.

How are proceedings instituted before the Seabed Disputes Chamber?¹

Proceedings may be instituted before the Seabed Disputes Chamber either by written application or by notification of a special agreement between the parties to submit a dispute to the Seabed Disputes Chamber.

For disputes between States Parties or between States Parties and the Authority, proceedings are instituted before the Seabed Disputes Chamber in the same manner as before the Tribunal sitting as a whole (Statute, article 24, paragraph 1; Rules, articles 54 and 55). The following questions give additional details concerning the filing of a written application and the notification of a special agreement in disputes involving a natural or legal person or a state enterprise.

What should a written application include in disputes involving the Enterprise, state enterprises, natural or legal persons or prospective contractors?

To institute proceedings before the Chamber by application, the applicant must submit a written application to the Registry of the Tribunal. This application must include:

- The name of the applicant and, where the applicant is a natural or legal person, the permanent residence or address or registered office address thereof;
- The name of the respondent and, where the respondent is a natural or legal person, the permanent residence or address or registered office address thereof;
- The sponsoring State, in any case where the applicant is a natural or legal person or a state enterprise;
- The sponsoring State of the respondent, in any case where the party against which the claim is brought is a natural or legal person or state enterprise;
- An address for service at the seat of the Tribunal;
- The subject of the dispute and the legal grounds on which jurisdiction is said to be based; and the precise nature of the claim, together with a statement of the facts and legal grounds on which the claim is based;
- The decision or measure sought by the applicant; and
- The evidence on which the application is founded (Rules, article 117).

What should the notification of a special agreement in disputes involving the Enterprise, state enterprises, natural or legal persons or prospective contractors include?

When proceedings are brought before the Chamber by the notification of a special agreement, the notification must indicate:

¹ Further information on the institution of proceedings is available in chapter 2, section I, of the *Guide to Proceedings*.

- The parties to the case and any sponsoring States of the parties;
- The subject of the dispute and the precise nature of the claims of the parties, together with a statement of the facts and legal grounds on which the claims are based;
- The decisions or measures sought by the parties; and
- The evidence on which the claims are founded (Rules, article 120, paragraph 1).

The notification must also provide information regarding participation and appearance in the proceedings by sponsoring States Parties (Rules, article 120, paragraph 2).

II. WRITTEN PROCEEDINGS²

What do written proceedings in disputes between States Parties or between States Parties and the Authority consist of?

In disputes between States Parties or between States Parties and the Authority, the written proceedings consist of memorials, counter-memorials and, if the Chamber so authorizes, a reply and a rejoinder, as well as all documents in support (Rules, article 44, paragraph 2; article 60; article 61, paragraph 3). The time-limits for the filing of each pleading must not exceed six months (Rules, article 59, paragraph 1).

What do written proceedings in disputes involving the Enterprise, State enterprises, natural or legal persons or prospective contractors consist of?

Written proceedings in a dispute instituted by an application consist of the application and the defence. The application must be served on the respondent (Rules, article 118, paragraph 1). Within two months after service of the application, the respondent must lodge a defence, stating:

- The name of the respondent and, where the respondent is a natural or legal person, the permanent residence or address or registered office address thereof;
- An address for service at the seat of the Tribunal;
- The matters in issue between the parties and the facts and legal grounds on which the defence is based;
- The decision or measure sought by the respondent; and
- The evidence on which the defence is founded (Rules, article 118, paragraph 2).

The time-limit for the response may be extended, at the request of the respondent, by the President of the Seabed Disputes Chamber. However, the President needs to be satisfied that there is adequate justification for the request (Rules, article 118, paragraph 3).

When a dispute is instituted by special agreement, the parties' statements of facts and legal grounds are included in the notification, which may constitute the entirety of the written proceedings (Rules, article 120).

² Further information on the conduct of written proceedings is available in chapter 2, section II, of the *Guide to Proceedings*.

What are the time-limits for the filing of pleadings in a dispute involving the Enterprise, state enterprises, natural or legal persons or prospective contractors?

Both in proceedings instituted by an application and by the notification of a special agreement, the Seabed Disputes Chamber may authorize or direct the filing of further pleadings (in addition to the application and defence or the notification of a special agreement) if the parties are so agreed or the Chamber decides, *proprio motu* or at the request of a party, that these pleadings are necessary. The President of the Chamber shall fix the time-limits within which these pleadings are to be filed (Rules, article 121).

III. ORAL PROCEEDINGS³

When is the date for the opening of oral proceedings fixed?

In both type of disputes mentioned above, the date for the opening of oral proceedings is fixed by the Seabed Disputes Chamber within six months from closure of the written proceedings (Rules, article 69, paragraph 1). In fixing the date, the Chamber will consider the need to hold the hearing without unnecessary delay and any special circumstances, including the urgency of the case or other cases on the List of cases (Rules, article 69, paragraph 2(a), (c)).

IV. PARTICIPATION OF SPONSORING STATES

Can a sponsoring State participate in proceedings before the Seabed Disputes Chamber in disputes involving State-sponsored natural or legal persons?

If a State-sponsored natural or legal person is a party to a dispute before the Seabed Disputes Chamber, the sponsoring State must be given notice and has the right to participate in the proceedings by submitting written or oral statements. If an action is brought against a State Party by a natural or legal person sponsored by another State Party, the respondent State may request the State sponsoring that person to appear in the proceedings on behalf of that person. Failing such appearance, the respondent State may arrange to be represented by a legal person of its nationality (Convention, article 190; Rules article 119). For disputes submitted by special agreement, information regarding participation by sponsoring States should be provided in the notification of special agreement (Rules, article 120, paragraph 2).

³ Further information on the conduct of oral proceedings is available in chapter 2, section IV, of the *Guide to Proceedings*.

V. JUDGMENT⁴

The judgment is read at a public sitting of the Chamber, the time and date of which are made known to the parties (Rules, article 124).

Are the decisions of the Seabed Disputes Chamber enforceable?

The decisions of the Chamber are enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought (Statute, article 39).

⁴ Further information concerning the judgment is available in chapter 2, section V, of the *Guide to Proceedings*.