



**INTERNATIONAL  
TRIBUNAL FOR THE LAW  
OF THE SEA**

# ITLOS INAUGURATION IN 1996





# ITLOS and Dispute Settlement under Part XV of the Convention

- I. The dispute settlement system under Part XV of the Convention**
  
- II. The jurisdiction of the International Tribunal for the Law of the Sea**

# A “compromise solution”

- \* Early proposals relating to dispute settlement were submitted to the Seabed Committee which operated from 1969 to 1973 (mainly related to seabed mining).
- \* Malta proposed the establishment of an “International Maritime Court” for settling all disputes in “International Ocean Space”.
- \* In a proposal by the USA presented to the Seabed Committee, provision was made for submission to a Law of the Sea Tribunal.

# A “compromise solution” (cont.)

- \* During the Conference (UNCLOS III), a Dispute Settlement Group was established to prepare alternative texts for dispute settlement procedures.
- \* One of the most difficult questions concerned the available mechanisms for dispute settlement (the selection of a tribunal having jurisdiction to issue binding decisions).
- \* This issue was discussed in the city of Montreaux and was solved through a compromise as contained in article 287 of the Convention.

# Principle of the peaceful settlement of disputes

“All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”

\* (Article 2, paragraph 3, of the UN Charter)

# Means of Settlement

“The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice.”

(Article 33 (1) of the UN Charter)

# Part XV - main features

1. A “compromise solution”.
2. The settlement of disputes mechanism under the United Nations Convention on the Law of the Sea takes full account of the principle of international law to **settle disputes by peaceful means**. Settlement of disputes takes place by **means chosen by the parties**
3. Part XV frames a **comprehensive system** for the settlement of disputes concerning the interpretation or application of the Convention. This system forms an **integral part** of the Convention (Part XV of the Convention).

# How does Part XV operate?

A complex system which requires:

- \* First, to have recourse to non-compulsory procedures (Part XV, Section 1, of the Convention)
- \* If the parties to the dispute fail to reach a settlement by recourse to these non-binding means, the principle of compulsory settlement applies and any party to the dispute can submit the dispute to any court or tribunal having jurisdiction under section 2 (Part XV, Section 2, of the Convention)
- \* Limitations and exception (Part XV, Section 3, of the Convention)

# Article 286 of the Convention

**Subject to section 3**, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

# Article 288, paragraph 1, of the Convention

A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.

# Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p.280

42. Considering that Japan maintains that the disputes are scientific rather than legal;

43. Considering that, in the view of the Tribunal, the differences between the parties also concern points of law;

44. Considering that, in the view of the Tribunal, a dispute is a "disagreement on a point of law or fact, a conflict of legal views or of interests" (Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.LI, Series A, No. 2, p. 11), and "[i]t must be shown that the claim of one party is positively opposed by the other" (South West Africa, Preliminary Objections, Judgment I.C.I. Reports 1962, p.328);

# M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain), Judgment, ITLOS Reports 2013, p. 4

93. Although both Parties agree that the origin of this case lies in the detention of the M/V “Louisa” and its crew, they disagree on the question whether a dispute concerning the interpretation or application of the Convention exists.

99. To enable the Tribunal to determine whether it has jurisdiction, it must establish a link between the facts advanced by Saint Vincent and the Grenadines and the provisions of the Convention referred to by it and show that such provisions can sustain the claim or claims submitted by Saint Vincent and the Grenadines.

# Article 300

## Good faith and abuse of rights

States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

# 1. Non-compulsory procedures (Part XV, Section 1)

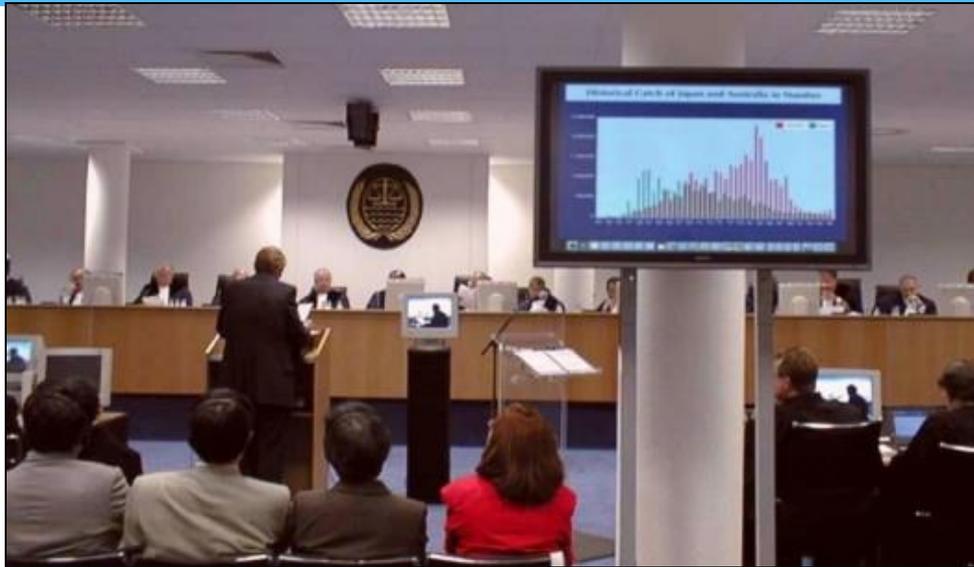
- Procedures other than the Convention (articles 281 and 282)
- Obligation to exchange views including negotiations (article 283)
- Conciliation (article 284)

# Article 281 of the Convention

*Procedure where no settlement has been reached by the parties*

1. If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed to seek settlement of the dispute by a peaceful means of their own choice, the procedures provided for in this Part apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure.
2. If the parties have also agreed on a time-limit, paragraph 1 applies only upon the expiration of that time-limit.

# SOUTHERN BLUEFIN TUNA



- ❑ **Australia/New Zealand v. Japan (Provisional Measures, 1999)**

# Article 282

## *Obligations under general, regional or bilateral agreements*

If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree.

# THE MOX PLANT CASE

## ❑ Ireland v. United Kingdom (Provisional Measures, 2001)



# Article 283

## *Obligation to exchange views*

1. When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.
2. The parties shall also proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement.

# M/V “Norstar- Judgment

208. When a dispute arises, article 283 of the Convention requires the parties to “proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means” (see *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, *Provisional Measures, Order of 23 September 2010*, *ITLOS Reports 2008-2010*, p. 58, at p. 67, para. 57). The Tribunal shares the view expressed by the arbitral tribunal in the *Chagos Marine Protected Area Arbitration* that “[a]rticle 283 cannot be understood as an obligation to negotiate the substance of the dispute” (*Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, *Award of 15 March 2015*, para. 378).

# Article 284

## *Conciliation*

1. A State Party which is a party to a dispute concerning the interpretation or application of this Convention may invite the other party or parties to submit the dispute to conciliation in accordance with the procedure under Annex V, section 1, or another conciliation procedure.
2. If the invitation is accepted and if the parties agree upon the conciliation procedure to be applied, any party may submit the dispute to that procedure.
3. If the invitation is not accepted or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.
4. Unless the parties otherwise agree, when a dispute has been submitted to conciliation, the proceedings may be terminated only in accordance with the agreed conciliation procedure.

## 2. Compulsory procedures entailing binding decisions (Part XV, Section 2)

- A. Choice of Procedure (article 287)
- B. Limitations and exceptions to applicability of compulsory procedures (articles 297 and 298)

# Choice of procedure – Article 287

A State Party is free to choose one or more of these means by a written declaration to be made under article 287 of the Convention and deposited with the Secretary-General of the United Nations:

- a) the International Tribunal for the Law of the Sea;
- 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 (fisheries, marine environment, marine scientific research, navigation)

(Article 287)

# Default mechanism: Annex VII arbitration

- If a State Party (which is a party to a dispute) did not make a declaration (see article 287, paragraph 3)
- If the parties to a dispute have not accepted the same procedure for the settlement of the dispute (see article 287, paragraph 5)

# Article 287, paragraph 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.”

- The jurisdiction of the court or tribunal becomes compulsory when the parties to the dispute have accepted it by virtue of a declaration made under article 287 of the Convention.

# Modifications

- A declaration (or a new declaration) can be made at any time (article 287, paragraph 1)
- A declaration can be revoked - but remains in force until 3 months after revocation (article 287, paragraph 6)
- Notwithstanding the declarations made, the parties to a dispute can agree to submit the case to another forum (article 287, paragraphs 4 and 5).

# ITLOS - CASES

- A. Prompt Release
- B. Provisional Measures
- C. Advisory opinions
- D. Merits



# Limitations: Article 297 of the Convention

- “automatic” limitations (no declaration is needed)
- “general” limitations (all States Parties are entitled to invoke them)
- broad in scope
- complex

# Exceptions: Article 298 of the Convention

- “Optional” – a written declaration is to be made (at any time)
- A declaration “without prejudice to the obligations arising under section 1”
- Deals with 3 types of disputes
- Choice permits to exclude one or more of the 3 types of disputes

# Headquarters



# ITLOS: Organization and Jurisdiction

## Outline:

- \* Establishment
- \* Organization
- \* Jurisdiction



# I. Establishment Inauguration – 18 October 1996



# I.ITLOS - Establishment



## II. Organization Judges



# The President



Judge  
Jin Hyun-Paik  
(Republic of  
Korea)

# Chambers of the Tribunal

- Seabed Disputes Chamber (Jurisdiction: Article 187, UNCLOS)
- Chamber of Summary Procedure
- Chamber for Fisheries Disputes
- Chamber for Marine Environment Disputes
- Chamber for Maritime Delimitation Disputes
- Chambers established under Article 15(2) of the Statute (*ad hoc* chambers formed at the request of the parties)

# The Registry



# III. Jurisdiction

A. Access to the Tribunal

B. Jurisdiction

(1. Contentious, 2. Advisory)

# A. Who has access to the Tribunal?

- The Tribunal is open to **States Parties to the Convention** (article 20 (1) of the Statute).

“States Parties” includes States and the other entities referred to in article 305 (international organizations and certain self-governing associated States and territories) which become parties to it.

- It is also open to **entities other than States Parties** in any case expressly provided for in Part XI of the Convention or in any case submitted pursuant to an agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case. (see article 20 of the Statute)

# B. Jurisdiction



## B. Jurisdiction

The key provision is article 21 of the Statute:

- The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with the Convention (this jurisdiction is subject to the provisions of article 297 and 298).
- It also comprises all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

Accordingly, the Tribunal has jurisdiction to deal with disputes (contentious jurisdiction) and legal questions (advisory jurisdiction) submitted to it – relating to the Convention.

# B. Jurisdiction

1. Contentious Jurisdiction (adjudication of disputes, judgment is binding upon the parties)

- (a) Article 287 of the Convention
- (b) Special agreement
- (c) Jurisdictional clauses in international agreements
- (d) Exclusive jurisdiction

2. Advisory opinions (legal questions, opinion is of a recommendatory nature)

# 1. Contentious Jurisdiction

## (a) Article 287 of the Convention – Choice of Procedure

A State Party is free to choose one or more of these means by a written declaration to be made under article 287 of the Convention and deposited with the Secretary-General of the United Nations:

- a) the International Tribunal for the Law of the Sea
- b) the International Court of Justice
- c) an arbitral tribunal (Annex VII)
- d) a special arbitral tribunal (Annex VIII: fisheries, marine environment, marine scientific research, navigation)

# The Tribunal's compulsory jurisdiction under Part XV, section 2

Part XV, section 2, of the Convention: “compulsory procedures entailing binding decisions”

- The Tribunal's jurisdiction becomes compulsory when the parties to the dispute have accepted it by virtue of a declaration made under article 287 of the Convention.
- In this situation, no further consent from the parties is needed in order to submit the dispute to the Tribunal.
- The case is to be submitted to the Tribunal by an application (unilateral request).
- The compulsory jurisdiction of ITLOS, ICJ and arbitral tribunal under Part XV, section 2, is equal.
- The scope of the Tribunal's jurisdiction is to settle disputes arising out of the interpretation or application of the provisions of the Convention (see article 288 of the Convention)

# Article 288

1. A court or tribunal referred to in article 287 shall have jurisdiction over **any dispute concerning the interpretation or application of this Convention** which is submitted to it in accordance with this Part.

# 1. Contentious Jurisdiction

## (b) Special agreements

- In the absence of 287 declarations (or of “matching-declarations”), the Tribunal may have jurisdiction over a dispute submitted on the basis of a special agreement concluded between the parties.
- The parties may also decide, by agreement, to transfer to the Tribunal a dispute that has been instituted before an arbitral tribunal established under article 287.

# Merits (Judgments)

## Arrest of vessels:

**Case No. 2:** *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)* with provisional measures under 290 (1)

**Case No. 18:** *The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain)* with provisional measures under 290 (1)

**Case No. 19:** *The M/V "Virginia G" Case (Panama/Guinea-Bissau)*

**Case No. 25:** *The "M/V Norstar" Case (Panama/Italy)* with preliminary objections

## IV. Merits (Judgments)

### Fisheries:

**Case No. 7:** *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile / European Union)*  
- DISCONTINUED

### Maritime delimitation:

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

**Case No. 23:** *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)* with provisional measures under 290 (1)

# 1. Contentious Jurisdiction

## (c) Jurisdictional clauses conferring jurisdiction on the Tribunal (disputes concerning international agreements related to the purposes of the Convention)

- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (24 November 1993)
- 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 (4 August 1995)
- 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (7 November 1996)
- Framework Agreement for the Conservation of the Living Marine Resources on the High Seas of the South-Eastern Pacific (14 August 2000)

# 1. Contentious Jurisdiction

## (d) “Exclusive” jurisdiction of the Tribunal:

On the basis of specific provisions of the Convention:

- Provisional measures pending constitution of an arbitral Tribunal (article 290, paragraph 5)
- Prompt release of vessels and crews (article 292)
- Disputes with respect to activities in the Area (Seabed Disputes Chamber according to article 187)

## Provisional Measures (article 290, paragraph 5, of the Convention)

Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4.

## Provisional measures cases: article 290 (5)

Cases Nos 3 & 4 : [Southern Bluefin Tuna Cases \(New Zealand v. Japan; Australia v. Japan\), Provisional Measures](#)

Case No. 10 : [The MOX Plant Case \(Ireland v. United Kingdom\), Provisional Measures](#)

Case No. 12 : [Case concerning Land Reclamation by Singapore in and around the Straits of Johor \(Malaysia v. Singapore\), Provisional Measures](#)

Case No. 20 : [The “ARA Libertad” Case \(Argentina v. Ghana\), Provisional Measures](#)

Case No. 22 : [The Arctic Sunrise Case \(Kingdom of the Netherlands v. Russian Federation\), Provisional Measures](#)

Case No. 24 : [The "Enrica Lexie" Incident \(Italy v. India\), Provisional Measures](#)

Case No. 26 : [Case concerning the detention of three Ukrainian naval vessels \(Ukraine v. Russian Federation\), Provisional Measures](#)

Case No. 27 : [The M/T “San Padre Pio” Case \(Switzerland v. Nigeria\), Provisional Measures](#)

# Prompt release – Jurisdiction (article 292 of the Convention)

- Vessel arrested by the authorities of a State Party
- Obligation by detaining State to release promptly the vessel or its crew upon the posting of a reasonable bond or other financial security
- If obligation not complied with, flag State may submit the question of release from detention to the Tribunal

# Prompt Release Cases

1. The M/V “SAIGA” Case (Saint Vincent and the Grenadines v. Guinea)
2. The “Camouco” Case (Panama v. France)
3. The “Monte Confurco” Case (Seychelles v. France)
4. The “Grand Prince” Case (Belize v. France)
5. The “Chaisiri Reefer 2” Case (Panama v. Yemen)
6. The “Volga” Case (Russian Federation v. Australia)
7. The “Juno Trader” Case (Saint Vincent and the Grenadines v. Guinea-Bissau)
8. The “Hoshinmaru” Case (Japan v. Russian Federation)
9. The “Tomimaru” Case (Japan v. Russian Federation)

# Disputes concerning activities in the Area

- \* The SBDC shall have jurisdiction in disputes with respect to activities in the Area falling within the categories referred to in article 187 (a) to (f)

The “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (article 1 (1) of UNCLOS)

- \* The SBDC also has the power to prescribe provisional measures (article 25 of the Statute)

# Article 187 of the Convention

1. “Disputes between States Parties concerning the interpretation or application of this Part and the Annexes relating thereto”
2. “Disputes between a State Party and the Authority”
3. “Disputes between parties to a contract, being States Parties, the Authority or the Enterprise, state enterprises and natural or juridical persons referred to in article 153, paragraph 2 (b)”
4. “Disputes between the Authority and a prospective contractor”
5. “Disputes between the Authority and a State Party, a state enterprise or a natural or juridical person sponsored by a State Party as provided for in article 153, paragraph 2 (b), where it is alleged that the Authority has incurred liability as provided in Annex III, article 22”
6. “Any other disputes for which the jurisdiction of the Chamber is specifically provided in this Convention”

## 2. Advisory Jurisdiction

- The **Seabed Disputes Chamber** is competent to give advisory opinions on legal questions arising within the scope of the activities of the Assembly or Council of the International Seabed Authority (article 191 of the Convention, e.g. Case No. 17).
- The **Tribunal** may also give advisory opinions on a legal question if this is provided for by an international agreements related to the purposes of the Convention (article 138 of the Rules, e.g. Case No. 21);

# ITLOS WEBSITE

<http://www.itlos.org>

