

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

“Jurisdiction”
Ximena Hinrichs
Registrar

Principle of consent

“the principle of consent by a State to the judicial settlement of its dispute with another State is fundamental to international judicial proceedings. It would be contrary to the principle of consent to accept the proposition that international courts or tribunals, through contentious or advisory proceedings, can resolve a bilateral dispute without the consent of a party to the dispute.”

Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment, ITLOS Reports 2020-2021 (forthcoming), para. 168.

Article 279 of the Convention

Obligation to settle disputes by peaceful means

States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter.

Article 287, paragraph 1, of the Convention

Choice of Procedure

1. 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)

Declarations

- 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)
- A new declaration, a notice of revocation or the expiry of a declaration does not in any way affect proceedings pending before a court or tribunal having jurisdiction under this article, unless the parties otherwise agree (article 287, paragraph 7)

Article 287, paragraph 4, of the Convention –

287 declarations accepting the same procedure:

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.

Article 287, paragraph 3 and 5, of the Convention

Annex VII: default mechanism:

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

5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.

Guide to Proceedings (annex 2)

Declaration under article 287 of the Convention accepting the jurisdiction of the Tribunal*

In accordance with article 287, paragraph 1, of the United Nations Convention on the Law of the Sea, the Government of [NAME] declares that it accepts the jurisdiction of the International Tribunal for the Law of the Sea **for the settlement of disputes concerning the interpretation or application of the Convention.**

* The declaration may be made by a State when signing, ratifying or acceding to the Convention or at any time thereafter. The declaration shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties (Convention, article 287, paragraphs 1 and 8).

Declaration under article 287

Saint Vincent and the Grenadines
22 November 2010

“In accordance with Article 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.**”

Declaration under article 287

Panama
29 April 2015

“In accordance with paragraph 1 of article 287 of the United Nations Convention on the Law of the Sea of December 10th, 1982, the Government of the Republic of Panama declares that it accepts the competence and jurisdiction of the International Tribunal of the Law of the Sea for the settlement of **the dispute between the Government of the Republic of Panama and the Government of the Italian Republic concerning the interpretation or application of UNCLOS that arose from the detention of the Motor Tanker NORSTAR, flying the Panamanian flag.**”

***M/V 'Louisa'* Judgment of 28 May 2013,
para. 81:**

“in cases where States Parties have made declarations of differing scope under Article 287 of the Convention, its jurisdiction exists only to the extent to which the substance of the declarations of the two parties to a dispute coincides”

**Article 288, paragraph 1, of the
Convention**

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.

Article 286 of the Convention

Application of procedures under this section

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 2, of the Convention

2. A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement.

Compromissory 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)

Article 288, paragraph 3, of the Convention

3. The Seabed Disputes Chamber of the International Tribunal for the Law of the Sea established in accordance with Annex VI, and any other chamber or arbitral tribunal referred to in Part XI, section 5, shall have jurisdiction in any matter which is submitted to it in accordance therewith.

Article 288, paragraph 4, of the Convention

4. In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.

Jurisdiction

Article 21 of the Statute:

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

Special agreements

- 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.

Guide to Proceedings (annex 3)			
<p style="text-align: center;">43 Annex 3</p> <p style="text-align: center;">Special Agreement Instituting Proceedings before the International Tribunal for the Law of the Sea</p> <p>[Identity of the parties to the agreement, for example] <i>The Government of ... and the Government of ...</i> <i>of</i> <i>The Government of ... and the [International Organisation]</i></p> <p>Considering that a dispute has arisen between them concerning [...].</p> <p>Desiring that this dispute should be settled by a decision of the International Tribunal for the Law of the Sea ("Tribunal") [or by a special chamber of the Tribunal formed pursuant to article 15, paragraph 2, of the Statute].</p> <p>Have agreed as follows:</p> <p style="text-align: center;">Article 1</p> <p>The Tribunal / [Chamber] is requested to determine [questions submitted to the Tribunal/Chamber].</p> <p style="text-align: center;">Article 2</p> <p>The contracting Parties agree that the written proceedings should consist of:</p> <p>(1) a Memorial of the [Government of ...] to be submitted within [...] months of the Notification of the present Agreement to the Tribunal [Chamber]. (2) a Counter-Memorial of the [Government of ...] to be submitted within [...] months of delivery of the Memorial.</p> <p style="text-align: center;">Article 3</p> <p><i>for entities not parties to the United Nations Convention on the Law of the Sea</i></p> <p>Both parties agree to comply with the terms of the Statute of the Tribunal, contained in Annex VI to the 1982 United Nations Convention on the Law of the Sea.</p> <p style="text-align: center;">Article 4</p> <p><i>where the dispute is being submitted to a special chamber of the Tribunal</i></p> <p>The dispute shall be resolved by a special chamber of the Tribunal, composed of [five] judges, pursuant to article 15, paragraph 2, of the Statute of the Tribunal.</p> <p>If the parties cannot agree on the composition of the chamber, any party may, after a period of 60 days following the date of the notification of this Agreement to</p>	<p style="text-align: center;">44</p> <p>the Tribunal, request the President of the Tribunal to determine the composition of the chamber. If the President is unable to act or is a national of one of the parties to the dispute, the composition of the Chamber shall be determined by the next available senior member of the Tribunal who is not a national of one of the parties to the dispute.]</p> <p style="text-align: center;">Article 5</p> <p>The present Agreement shall enter into force upon signature. It shall be notified to the Tribunal pursuant to article 24, paragraph 1, of the Statute of the Tribunal. The notification may be done jointly or by any party to the Agreement.</p> <p style="text-align: center;">or</p> <p>This Agreement shall enter into force on the first day of the month following the date of receipt of the last of the notifications by which the parties have informed each other of the completion of their respective formal requirements for the entry into force of this Agreement.</p> <p>Upon entry into force of the present Agreement, it shall be notified to the Tribunal pursuant to article 24, paragraph 1, of the Statute of the Tribunal. The notification may be done jointly or by any party to the Agreement.</p> <p style="text-align: center;">or</p> <p>The present Agreement shall be subject to ratification. The instruments of ratification shall be exchanged as soon as possible in [...] and the present Agreement shall enter into force immediately upon the exchange of those instruments.]</p> <p>Upon entry into force of the present Agreement, it shall be notified to the Tribunal pursuant to article 24, paragraph 1, of the Statute of the Tribunal. The notification may be done jointly or by any party to the Agreement.</p> <p style="text-align: center;">Article 6</p> <p>In witness whereof the undersigned, being duly authorized thereto, have signed the present Agreement.</p> <p>Done in duplicate at [place], on [date], both texts being equally authoritative.</p> <table border="1" style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 50%; text-align: center;">Name of signatory Position</td> <td style="width: 50%; text-align: center;">Name of signatory Position</td> </tr> </table>	Name of signatory Position	Name of signatory Position
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Advisory jurisdiction

- (a) Advisory competence of the Seabed Disputes Chamber (articles 191 and 159 (10) of the Convention)
- (b) Advisory competence of the Tribunal (article 21 of the Statute and article 138 of the Rules)

“Compulsory” 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)

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

5. 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.

Article 292 Prompt release of vessels and crews

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.

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