Maritime Talks 2013
ITLOS and IMO

Aerial view of ITLOS (Hamburg)

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   (1) Obligation to settle disputes by peaceful means (Article 279 of the Convention)
      - States Parties shall settle any disputes between them concerning the interpretation or application of the Convention by peaceful means.
      - To this end, States Parties shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

   (2) Submission of disputes to compulsory procedures entailing binding decisions (Article 286)
      - Any dispute concerning the interpretation or application of the Convention shall, where no settlement has been reached by negotiation or conciliation, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under the Convention.
I. Dispute settlement procedures under the United Nations Convention on the Law of the Sea (continued)

1. Basic structure of the dispute settlement procedures provided for in the United Nations Convention (continued)

(3) Choice of compulsory procedure entailing binding decisions (Article 287)
- A State shall be free to choose one or more of the following means:
  (a) the International Tribunal for the Law of the Sea (ITLOS) established in accordance with Annex VI of the Convention;
  (b) the International Court of Justice (ICJ);
  (c) an arbitral tribunal constituted in accordance with Annex VII;
  (d) a special arbitral tribunal constituted in accordance with Annex VIII for disputes relating to fisheries, the marine environment, marine scientific research or navigation.
- 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 4)
- If the parties to the 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. (Article 287, paragraph 5)
- If a State Party, which is a party to a dispute, has not chosen any of the above means, it shall be deemed to have accepted arbitration in accordance with Annex VII. (Article 287, paragraph 3)
I. Dispute settlement procedures under the United Nations Convention on the Law of the Sea (continued)

Chart showing the choice of compulsory procedure and the jurisdiction of each forum

State A choice: ITLOS+ICJ → Dispute between A and B → ITLOS
State B choice: ITLOS+Special Arbitral Tribunal
State C choice: ITLOS+ICJ → Dispute between C and D → ICJ
State D choice: ICJ
State E choice: ITLOS → Dispute between E and F → Arbitration
State F choice: None
State G choice: ICJ → Dispute between G and H → Arbitration
State H choice: Arbitration
State I choice: None → Dispute between I and J → Arbitration
State J choice: None
I. Dispute settlement procedures under the United Nations Convention on the Law of the Sea (continued)

2. Urgent procedures

(1) Provisional measures (Article 290)

(a) If a dispute has been duly submitted to a court or tribunal which considers that prima facie it has jurisdiction under the Convention, the court or tribunal may, pending the final decision, prescribe any provisional measures which it considers appropriate under the circumstances:
   (i) to preserve the respective rights of the parties to the dispute; or
   (ii) to prevent serious harm to the marine environment. (Article 290, paragraph 1)

(b) Pending the constitution of an arbitral tribunal\(^1\) to which a dispute is being submitted under the Convention, 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, ITLOS or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures 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. (Article 290, paragraph 5)

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1. The main provisions of Annex VII of the Convention concerning the constitution of an arbitral tribunal: the tribunal shall consist of 5 members; each of the parties to the dispute shall appoint 1 member; the other 3 members shall be appointed by agreement between the parties to the dispute; if the parties are unable to reach such agreement within a prescribed period of time, the President of ITLOS shall appoint the remaining members as a last resort. As the constitution of an arbitral tribunal usually requires a few months, need may arise in the meantime, for instance, to take provisional measures for preventing serious harm to the marine environment.
I. Dispute settlement procedures under the United Nations Convention on the Law of the Sea (continued)

2. Urgent procedures (continued)

(1) Provisional measures (Article 290) (continued)
   (c) The parties to the dispute shall comply promptly with any provisional measures prescribed under this article. (Article 290, paragraph 6)

(2) Prompt release of vessels and crews (Article 292)
   - 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 the 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:
     (a) to any court or tribunal agreed upon by the parties or,
     (b) failing such agreement within 10 days from the time of detention,
        (i) to a court or tribunal accepted by the detaining State under Article 287 or
        (ii) to ITLOS, unless the parties otherwise agree. (Article 292)
I. Dispute settlement procedures under the United Nations Convention on the Law of the Sea (continued)

3. Seabed dispute settlement procedures

(1) The Seabed Disputes Chamber shall be composed of 11 members, selected by a majority of the elected members of the Tribunal from among them. The members of the Chamber shall be selected every 3 years. (Article 35 of the Statute of ITLOS)

(2) The Seabed Disputes Chamber shall have jurisdiction in disputes with respect to activities in the Area falling within such categories as disputes between States Parties, between States Parties and the Authority, between parties to a contract, and between the Authority and a prospective contractor. (Article 187)

(3) The decisions of the Chamber shall be 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. (Article 39 of the Statute of ITLOS)

2. “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction. (Article 1, paragraph 1.(1)). “Activities in the Area” means all activities of exploration for, and exploitation of, the resources of the Area. (Article 1, paragraph 1.(3)).

3. “Authority” means the International Seabed Authority. (Article 1, paragraph 1.(2))
I. Dispute settlement procedures under the United Nations Convention on the Law of the Sea (continued)

4. Advisory opinions

(1) The Seabed Disputes Chamber shall give advisory opinions at the request of the Assembly or the Council (of the Authority) on legal questions arising within the scope of their activities. Such opinions shall be given as a matter of urgency. (Article 191)

(2) The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purpose of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion. (Article 138 of the Rules of the Tribunal)
II. Jurisprudence of ITLOS and pending cases
   (List of Cases)

1. The M/V “Saiga” Case (Saint Vincent and the Grenadines v. Guinea)
   Prompt release (Judgment: 4 December 1997)

2. The M/V “Saiga” (No.2) Case (Saint Vincent and the Grenadines v. Guinea)
   Provisional measures (Order: 11 March 1998) and merits (Judgment: 1 July 1999)

3. & 4. Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan)
   Provisional measures pending the constitution of an arbitral tribunal (Order: 27 August 1999)

5. The “Camouco” Case (Panama v. France)
   Prompt release (Judgment: 7 February 2000)

6. The “Monte Confurco” Case (Panama v. France)
   Prompt release (Judgment: 18 December 2000)

7. Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile / European Community)
   On 20 December 2000 the Tribunal formed a Special Chamber consisting of 4 members of the Tribunal and 1 ad hoc Judge chosen by Chile. On 25 November 2009, however, the parties jointly requested the Special Chamber to issue an Order for discontinuance of the case as a result of the agreement reached between them. By the Order of the Special Chamber, the case was removed from the List of Cases.

8. The “Grand Prince” Case (Belize v. France)
   Prompt release (Judgment: 20 April 2001)
9. The “Chaisiri Reefer 2” Case (Panama v. Yemen)
Prompt release (Following an agreement between the parties, the proceedings were discontinued, and the case was removed from the List of Cases on 13 July 2001.)

10. The MOX Plant Case (Ireland v. United Kingdom)
Provisional measures pending the constitution of an arbitral tribunal (Order: 3 December 2001)

11. The “Volga” Case (Russian Federation v. Australia)
Prompt release (Judgment: 23 December 2002)

12. Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)
Provisional measures (Order: 8 October 2003)

13. The “Juno Trader” Case (Saint Vincent and the Grenadines v. Guinea-Bissau)
Prompt release (Judgment: 18 December 2004)

14. The “Hoshinmaru” Case (Japan v. Russian Federation)
Prompt release (Judgment: 6 August 2007)

15. The “Tomimaru” Case (Japan v. Russian Federation)
Prompt release (Judgment: 6 August 2007. The Tribunal found that the Application for the release of the vessel was without object on the grounds that the Supreme Court of the Russian Federation had dismissed the complaint concerning the confiscation of the Tomimaru and that this decision concluded the proceedings before the appropriate domestic forum.)
16. Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal
   Merits (Judgment: 14 March 2012)

17. Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the International Seabed Area
   Request for advisory opinion submitted to the Seabed Disputes Chamber by the Council of the International Seabed Authority (Advisory opinion: 1 February 2011)

18. The M/V “Louisa” Case (Saint Vincent and the Grenadines v. Kingdom of Spain)
   Provisional measures (Order: 23 December 2010. The Tribunal did not find that the circumstances, as they presented themselves to the Tribunal, were such as to require the exercise of its powers to prescribe provisional measures under article 290, paragraph 1, of the Convention.)
   Merits (The oral proceedings took place from 4 to 12 October 2012. The judgment will be read later this spring.)

19. The M/V “Virginia G” Case (Panama/Guinea-Bissau)
   Merits (The oral proceedings will take place in September 2013.)

20. The “ARA Libertad” Case (Argentina v. Ghana)
   Provisional measures (Order: 15 December 2012)
III. Future role of ITLOS

As seen in the jurisprudence of ITLOS, most of its judgments and orders concerned disputes for which its compulsory jurisdiction (unilateral submission) is recognized under the Convention (such as prompt release of vessels and crews, and provisional measures.) This fact gave rise to the misunderstanding that ITLOS is a tribunal established only for these urgent cases, in spite of its wide range of jurisdiction on the interpretation or application of the Convention and other international agreements related to the purposes of the Convention, and advisory jurisdiction on international seabed matters in particular. Recently, a dispute concerning the delimitation of maritime boundary was submitted to ITLOS and an advisory opinion was requested from its Seabed Disputes Chamber. This fact demonstrates that the international community has gradually deepened understanding of the true functions of ITLOS.

In the future, ITLOS is expected to play a more important role in the settlement of disputes concerning such matters as the delimitation of maritime boundary, the protection and preservation of the marine environment, and the exploration and exploitation of seabed resources. There may be more requests for advisory opinions to the Seabed Disputes Chamber and ITLOS.
IV. Complementarity between ITLOS and the IMO

1. Jurisdiction of ITLOS
   The jurisdiction of ITLOS 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 ITLOS (Statute, Article 21). ITLOS shall have jurisdiction over any dispute concerning the interpretation or application of the Convention which is submitted to it in accordance with Part XV of the Convention. ITLOS shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of the Convention, which is submitted to it in accordance with the agreement (Convention, Article 288).

2. Mission of the IMO
   The mission of the IMO as a UN specialized agency is to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation. This will be accomplished by adopting the highest practicable standards of marine safety and security, efficiency of navigation and prevention and control of pollution from ships, as well as through consideration of the related legal matters and effective implementation of the IMO’s instruments with a view to their universal and uniform application. (Mission statement as stated in Resolution A. 1011(26) of 26 November 2009. See also Article 1 of the Convention of the IMCO adopted on 6 March 1948.)
IV. Complementarity between ITLOS and the IMO (continued)

3. Complementarity between ITLOS and the IMO
   Although both ITLOS and the IMO cover a wide range of common ground on law of
   the sea and ocean matters, the jurisdiction of ITLOS and the mission of the IMO are clearly
different. Yet activities of these bodies are complementary to each other so as to ensure
coherent and efficient implementation of the Convention and international agreements
related to the purposes of the Convention.

4. Possible areas of operation between ITLOS and the IMO
   1) The IMO may encourage States to include the dispute settlement procedures provided for
      in Part XV of the Convention in international agreements and conventions to be adopted
      under the auspices of the IMO (e.g. Nairobi International Convention on the Removal of
      Wrecks).
   2) ITLOS may settle disputes concerning the interpretation or application of the IMO
      agreements and conventions or give advisory opinions.
   3) The IMO may give ITLOS technical advice on such matters as shipping, navigation and
      the prevention and control of pollution from ships.
   4) Cooperation on training and capacity building (e.g. 35 Nippon Fellows from ITLOS
      visited the IMO in 6 years).
   5) Exchange of information on new developments in law of the sea and ocean matters.
      (Already since 2002, an administrative arrangement on cooperation is in place between the
      Registry of the Tribunal and the IMO Secretariat, on the basis of which, inter alia,
      publications are exchanged between the two organizations.)
ITLOS oral proceedings (Case No.16)
Sketch-map No. 7:
EEZ/CS
Grey area

Mercator Projection (20°N)
WGS 84

This sketch-map, on which the coasts are presented in simplified form, has been prepared for illustrative purposes only.
The M/V “Virginia G”
The frigate “ARA Libertad”
The frigate “ARA Libertad”