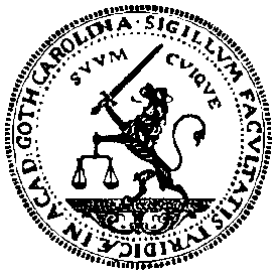

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Dispute Settlement in Maritime Law

The Effectiveness of the International Tribunal for the Law of the Sea in Resolving Maritime Disputes

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Contents

Summary

The International Tribunal for the Law of the Sea (ITLOS), established under the United Nations Convention on the Law of the Sea (UNCLOS), plays a vital role in resolving disputes about maritime law. As the world's oceans become more important for trade, resources and environmental stability, ITLOS provides a specialized legal framework to address conflicts. This thesis examines how effective ITLOS is at enforcing its judgments and compares it to other dispute settlement mechanisms under UNCLOS.

Using a legal analytical and dogmatic method, the essay explores the strengths and weaknesses of ITLOS through a comparative analysis and case study. ITLOS is effective in procedural disputes like the prompt release of vessels, where compliance rates are high. However, in politically sensitive cases, such as The *Arctic Sunrise* case, where state sovereignty and power dynamics play a role, compliance is lower. In contrast, cases like The *Bay of Bengal Maritime Boundary Dispute* show ITLOS's ability to resolve complex disputes peacefully when the states involved operate on more equal footing.

The thesis also compares ITLOS with other dispute resolution mechanisms under UNCLOS, such as arbitration and the International Court of Justice (ICJ). Arbitration is more flexible but depends on state cooperation, which can lead to mixed results, as seen in The *South China Sea Arbitration.* The ICJ, while influential and respected globally, lacks ITLOS's specialization in maritime law, making ITLOS better suited for technically complex issues.

The result of the investigation shows that ITLOS is an important but limited mechanism. Its effectiveness depends not just on its legal expertise but also on the willingness of states to comply with its rulings. Comparisons with other mechanisms show that each has strengths and challenges, with ITLOS's specialization being its main advantage. However, broader issues in international law, such as power imbalances and the lack of enforcement mechanisms, continue to affect all judicial bodies, including ITLOS.

Sammanfattning

Den internationella havsrättsdomstolen (ITLOS), inrättad under FN:s havsrättskonvention (UNCLOS), utgör en avgörande tvistlösningsmekanism vid lösandet av havsrättsliga tvister. I takt med att världens hav blir viktigare för handel, resurser och miljömässig stabilitet, erbjuder ITLOS en specialiserad rättslig ram för att lösa tvister.

Uppsatsen undersöker hur effektivt ITLOS kan verkställa sina domar och jämför samtidigt ITLOS med andra tvistlösningsmekanismer under UNCLOS. Genom både en rättsanalytisk och rättsdogmatisk metod utforskar uppsatsen ITLOS styrkor och svagheter genom dels en komparativ analys, dels en mindre fallstudie. Uppsatsen visar att ITLOS är effektiv i tvister av processrättslig karaktär, som vid omedelbar frigivning av fartyg och besättning, och att efterlevnaden av sådana domar är hög. I politiskt känsliga tvister däremot, där statssuveränitet och maktbalans spelar roll, är efterlevnaden betydligt lägre. Samtidigt visar fall som *The Bay of Bengal Maritime Boundary Dispute* att ITLOS kan lösa tvister på ett effektivt sätt när de berörda staterna har ett mer jämlikt maktförhållande.

Uppsatsen jämför även ITLOS med andra tvistlösningsmekanismer under UNCLOS, däribland skiljeförfarande och den Internationella Domstolen (ICJ). Skiljeförfarande erbjuder mer flexibelt, men är beroende av staters frivilliga deltagande, vilket kan resultera i varierande utfall. Detta illustreras exempelvis i The *South China Sea Arbitration*. ICJ, som är globalt inflytelserik och respekterad, saknar ITLOS:s specialisering inom havsrätt, vilket gör ITLOS bättre lämpad för tekniskt komplexa frågor.

Uppsatsens slutsats visar att ITLOS är en viktig men begränsad tvistlösningsmekanism. Domstolens effektivitet avgörs inte bara av dess juridiska fackkunskap, utan även av staters vilja att följa dess domar och avgöranden. Jämförelse med andra mekanismers visar att alla har sina styrkor och utmaningar, där ITLOS specialisering är dess största fördel. Dock kvarstår bredare problem inom international rätt, såsom maktobalans och

bristen på verkställighetsmekanismer, vilket påverkar alla juridiska organ, inte minst ITLOS.

Abbreviations

ITLOS	International Tribunal for the Law of the Sea
UNCLOS	The United Nations Convention on the Law of the Sea
ICJ	International Court of Justice
PCA	Permanent Court of Arbitration

1 Introduction

1.1 Background

The International Tribunal for the Law of the Sea (ITLOS) operates withing a rapidly changing global context, where maritime disputes are increasingly complex and high-stakes. As the world's oceans play a critical role in global trade, resource extraction, environmental stability, and geopolitical strategy, effective mechanisms for resolving maritime disputes are more relevant than ever. From overlapping territorial claims in resource-rich regions like the South China Sea to rising sea levels threatening the territorial integrity of small island states, the challenges facing ocean governance demand robust and impartial legal frameworks. ITLOS, as a judicial body established under the United Nations Convention on the Law of the Sea (UNCLOS), is uniquely positioned to address these issues.

UNCLOS, often described as the constitution of the ocean[1], has since its entry into force in 1994 successfully been the primary legal framework governing all marine and maritime activities. UNCLOS did not only codify preexisting customary law principles, but also invented new concepts of international law. The breadth of the territorial sea, transit passages and the exclusive economic zone (EEZ) are all new concepts in international law invented during the negotiation process.[2] ITLOS is consequently essential for maintaining the integrity of UNCLOS, safeguarding its principles, and ensuring UNCLOS remains a living framework capable of addressing modern maritime challenges. However, ITLOS is just one of many judicial bodies equipped to handle disputes related to maritime law. The question remains how ITLOS distinguishes itself from other judicial bodies and whether its technical expertise has led to increased compliance rates.

[1] Havercroft, Jonathan, & Kloker, Alice. "A Constitution for the Ocean? An Agora on Ocean Governance." P. 13–15.

[2] Puri, Rama. "EVOLUTION OF THE CONCEPT OF EXCLUSIVE ECONOMIC ZONE IN UNCLOS III : INDIA'S CONTRIBUTION." P. 497–525.

1.2 Aim, Research Questions and Delimitations

The purpose of this text is thus to investigate the effectiveness of ITLOS as a dispute settlement mechanism under UNCLOS, with efficiency defined in Section 3.2. below. Consequently, the overarching research question is formulated as follows:

- How effective is ITLOS as a dispute settlement mechanism under UNCLOS regarding successful enforcement of its judgements?

To answer the research question outlined above, and analyse the effectiveness of ITLOS through a comparative perspective, one sub-question has been formulated:

- How does ITLOS's performance, in terms of success, failure, and frequency of use, compare to other dispute settlement mechanisms under UNCLOS?

Due to the limited scope of this bachelor's thesis, a few limitations have been imposed. As the texts primary objective is to analyse and assess the effectiveness of ITLOS, other dispute settlement mechanisms under UNCLOS will only be discussed briefly. Nevertheless, a comprehensive evaluation of ITLOS's success or shortcomings necessitates a comparative analysis between these mechanisms. While such comparisons will be addressed, they will be explored in less detail.

Also following the thesis limited scope, only a couple of carefully selected cases have been selected to be discussed under Section 3.4 The selection process is further explained below.

Another important factor when discussing a court's effectiveness is the scope of its jurisdiction. A broader jurisdiction allows the court to hear more cases,

potentially enhancing its overall efficiency. In the case of ITLOS, jurisdictional disputes are relatively uncommon. Most cases brought before ITLOS involve well-defined maritime issues, where its jurisdiction is generally clear and uncontested. [3]As states voluntarily submit cases to ITLOS, they typically accept its authority to resolve the matter. That said, jurisdictional disputes under ITLOS do occasionally arise. Given the focus of this thesis, the jurisdictional aspect of ITLOS's effectiveness will not be addressed in detail.

1.3 Materials and Methodology

This thesis is primarily based on a legal analytical method to examine and evaluate the practical effectiveness and applicability of ITLOS judgements. As the thesis aims to understand the practical outcomes of ITLOS judgements, the legal analytical method is suitable to critically assess how the legal norms governing ITLOS judgements work in real world- contexts, and whether the judgements they are based on produce desirable or undesirable outcomes.[4]

Complementing this approach a legal dogmatic method is also used. The legal dogmatic method aims to describe the law using the established legal source.[5] In order to understand how the compulsory dispute settlement procedure under UNCLOS works, a legal dogmatic method is necessary as it stipulates the legal foundation upon which ITLOS jurisdiction is based. Reasons for, and answers to why some states choose not to comply with the tribunal's judgements, such as China in the *South China Sea Arbitration*[6] case, may also be found in established legal sources, why the legal dogmatic method is appropriate when exploring these possible explanations. As a primary legal

[3] For example: The M/V "Louisa" case (*Saint Vincent and the Grenadines v. Kingdom of Spain)* Case No. 18. Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (*Bangladesh v. Myanmar*) Case No. 16.

[4] Sandgren (2021) 53-54.

[5] Sandgren (2021), 51f.; C.f. Kleubenab (2018), 21 ff.

[6] South China Sea Arbitration (*The Republic of the Philippines v. The Peoples Republic of China).* PCA Case No: 2013-19. Hereafter *South China Sea Arbitration.* The case was not directly adjudicated by ITLOS but by an arbitration tribunal constituted under Annex VII of UNCLOS. However, the case highlights enforcement challenges for the entire UNCLOS dispute resolution system.

source, the United Nations Convention on the Law of the Sea (UNCLOS) is used.

As the thesis aims to investigate the effectiveness of ITLOS as dispute settlement mechanism, several court judgements and their outcomes will be studied. The selected cases all showcase different aspects of ITLOS's efficiency or inefficacy, regarding both enforcement and jurisdictional issues. As the cases are not used to interpret or clarify any legal norms or frameworks, I do not categorise them as sources in this thesis. Instead, the cases are used as part of the legal analytical method to illustrate the outcome of ITLOS judgements.

The cases chosen provide a well-rounded analysis of ITLOS's efficiency, highlighting both successes and challenges. The *Saiga* (No.1 and No. 2)[7] cases are notable for being ITLOS's first full-merits cases, and besides the outcome itself, a significant aspect was that the cases were brought before the tribunal at all. At the time, ITLOS was entirely untested, and resorting to a binding, third-party judicial dispute settlement procedure was, and remains, relatively uncommon.[8] The cases are widely seen as a landmark success, and ITLOS demonstrated its capability to assert its jurisdiction and addressed both procedural and substantive issues effectively.[9]

The *Bay of Bengal Maritime Boundary Dispute*[10] case showcases ITLOS's capacity to address complex legal, technical, and geopolitical challenges within the framework of UNCLOS. The dispute between Bangladesh and Myanmar was highly infected and had persisted for decades.[11] ITLOS

[7] The M/V "Saiga" case (Saint Vincent and the Grenadines v. Guinea) No. 1 and No. 1. Hereafter *M/V Saiga (No. 1 or No. 2).*

[8] Lowe, Vaughan, & Evans, Malcolm D. "The M/V Saiga: The First Case in the International Tribunal for the Law of the Sea. P. 187–99.

[9] Fayette, Louise de la. "International Tribunal for the Law of the Sea: The M/V 'Saiga' (No.2) Case (St. Vincent and the Grenadines v. Guinea), Judgment." P. 467–76.

[10] Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (*Bangladesh v. Myanmar*) Case No. 16. Hereafter *Bay of Bengal Maritime Boundary Dispute.*

[11] Bissinger, Jared. "The Maritime Boundary Dispute between Bangladesh and Myanmar: Motivations, Potential Solutions, and Implications." P. 103–42. ´

provided a peaceful resolution through legal means, and both Bangladesh and Myanmar complied with and accepted ITLOS judgement.

The final case chosen, the *Arctic Sunrise* case[12], highlights the systematic challenges of ensuring compliance in international law, and reminds us that the system relies heavily on voluntarily compliance by states. The case is therefore critical for understanding ITLOS's weaknesses and serves as a strong example of how its authority can be undermined by powerful states.

Besides cases, a selection of journal articles and book chapters will also be used. Several are slightly older, but despite their age I have assessed that the sources are still relevant.

1.4 Previous Research

There is a substantial body of research on the compliance with international court judgments. Among the most notable contributions to the study of ITLOS, in particular, is the work of Dr. Natalie Klein. Her book, *Dispute Settlement in the UN Convention on the Law of the Sea*, has served as a significant source of inspiration for this thesis.

1.5 Outline

Chapter 2 provides an overview of all dispute settlement mechanisms available under UNCLOS, including both binding and non-binding options. The purpose of this chapter is to provide a complete overview of these mechanisms and to clarify ITLOS's role within the broader framework. Following this, Chapter 3 shifts focus to ITLOS, beginning with a brief account of its historical context, an outline of its various types of rulings, and a case study. Finally, Chapter 4 examines ITLOS's effectiveness from a comparative perspective, while also discussing different factors affecting its performance.

[12] The "Arctic Sunrise" Case (*Kingdom of the Netherlands v. Russian Federation)* Case No. 22. Hereafter *Arctic Sunrise* case.

2 Dispute Settlement Mechanisms Under UNCLOS

2.1 Non – Binding Procedures

The traditional approach to dispute settlement regarding the law of the sea has historically relied on flexible, consent-based frameworks supported by various diplomatic methods.[13] UNCLOS Article 279 mandates that states resolve disputes through peaceful means, explicitly referencing article 33(1) of the UN Charter. Furthermore, Article 283 obliges states to "exchange views", implicitly prioritizing negotiation as the primary mechanism for dispute settlement.[14]

While Section 1 of Part XV emphasizes the obligation of states to first turn to non-binding methods for resolving disputes, the obligation is not voluntary. Article 279 unequivocally requires states to pursue peaceful dispute settlement and exhaust alternative mechanism before invoking binding procedures.[15] Thus, although the outcomes of these initial processes are not binding, and the outcomes not mandatory, adherence to the prescribed procedure still very much is.

2.1.1 Negotiation

As noted above, Article 283 obliges states to "exchange views" when a dispute arises between States Parties to the convention. Serving as both the primary and preferred method, negotiation encourages cooperation rather

[13] Klein (2005) P. 31.
[14] United Nations Conventions on the Law of the Sea 1982: A Commentary, P. 29.
[15] UNCLOS Art. 286.

than confrontation and, if successful, leads to mutually acceptable solutions with high compliance rates.[16]

However, negotiation solely depends on the compliance and good faith of the parties involved. If one party is unwilling to negotiate in good faith or deliberately delays the process, it can render negotiations ineffective, requiring escalation to compulsory binding procedures under UNCLOS. Power imbalance between states may also affect the outcome. A stronger or more influential state may dominate the process, potentially leading to inequitable outcomes that favour the stronger party.[17]

2.1.2 Conciliation (Annex V)

Article 284 of the convention offers conciliation as a dispute settlement method. Conciliation is of large importance, as it strikes a compromise between third-party settlement and non-binding decisions. Conciliation is a process where states mutually agree to resolve a dispute through a conciliation commission who proposes recommendations to settle the issue. Conciliation is also prescribed as a compulsory procedure for certain disputes, as stipulated in Article 297(2) and 298(1)(a). Even though participation in compulsory conciliation is mandatory, the outcome remains non-binding. The most notable case of compulsory conciliation, and so far, (2024), the only successful invocation of the procedure, is the *Timor- Leste v. Australia* case.[18] After years of unsuccessful negotiations, Timor-Leste invoked compulsory conciliation under Annex V, Section 2. Australia had opted out of binding arbitration or adjudication for disputes related to maritime boundary disputes[19], but these disputes are still subject to compulsory conciliation, an

[16] Klein (2005) P. 33. Notable cases successfully solved through negotiation: Gulf of Tonkin Agreement (2000), Timor Sea Treaty (2002), Canada- France Agreement on Saint Pierre and Miquelon (1992), Norway-Russia Maritime Delimitation (2010), Agreed Minutes Between Indonesia and the Philippines (2001).

[17] Klein (2005) . P. 52.

[18] Timor Sea Conciliation (*Timor – Leste v. Australia*) 2016-2018. PCA Case No: 2016-10.

[19] UNCLOS Art. 298(1)(a)(i).

option Timor-Leste utilized. The procedure led to the signing of a new maritime boundary treaty in 2018, resolving the dispute.[20]

2.2 Binding Procedures

Before resorting any of the four binding procedures under Article 286, all non-binding procedures must first be fully exhausted, as required by the obligation to "exchange views" under Article 283 of UNCLOS. Only after such views have been exchanged and no resolution is reached through the methods outlined in Section 1 do the courts and tribunals specified in Article 287 gain jurisdiction. Determining when non-binding procedures are fully exhausted, however, remains a subject of debate. Several cases have addressed jurisdictional questions arising from this obligation.[21] As a general standard, ITLOS has concluded that the requirement is met when one party to the dispute determines that there is no longer a realistic prospect of resolving the matter through negotiations or other non-binding means.[22]

The option to choose from four compulsory dispute settlement methods under Article 286 and Article 287 derives from the wish to include compulsory settlement under UNCLOS at all. Since Article 309 prohibits reservations to the Convention, states parties can not opt out of its dispute settlement provisions. During negotiations, consensus on a single dispute resolution mechanism could not be reached. Instead of removing dispute settlement clauses all together, multiple options were instead implemented in order to broaden ratification.[23]

[20] Maritime Boundaries Treaty (2018).

[21] In the *Southern Bluefin Tuna* case the tribunal considered that the obligation to exchange views was fulfilled due to the negotiations being "prolonged, intense and serious". Para. 55.

[22] Klein, P. 33.

[23] Charney, Jonathan I. "The Implications of Expanding International Dispute Settlement Systems: The 1982 Convention on the Law of the Sea." P. 69–75.

2.2.1 International Tribunal for the Law of the Sea (ITLOS)

The International Tribunal for the Law of the Sea (ITLOS) is an independent judicial body established under the United Nations Convention on the Law of the Sea (UNCLOS), included as one of the four dispute resolution mechanisms listed in Article 287. The Tribunal is discussed under Section 3.

2.2.2 International Court of Justice (ICJ)

The International Court of Justice (ICJ), established in 1945 under the Charter of the United Nations, is the principal judicial organ of the UN.[24] Prior to the establishment of UNCLOS and the International Tribunal for the Law of the Sea (ITLOS), the ICJ had already handled numerous cases related to maritime law, basing its decisions on customary international law as well as bilateral and multilateral treaties.[25]

The ICJ's jurisdiction extends beyond UNCLOS, allowing it to address broader legal issues such as disputes involving overlapping treaties, questions of sovereignty, and matters governed by customary international law. This capacity grants the ICJ a unique and important position in international dispute resolution. The court has proven highly effective in resolving maritime disputes, leveraging its legal authority and expertise to provide binding decisions generally respected by states.[26]

A notable example is the *North Sea Continental Shelf*[27] cases, in which the ICJ addressed the delimitation of the continental shelf in the North Sea and established key principles for equitable boundary determination.[28] More recently, the ICJ resolved the *Maritime Delimitation in the Indian Ocean*

[24] United Nations Charter. Chapter XIV. Art 92.

[25] For example: Corfu Channel Case (*United Kingdom v. Albania)* 1949. North Sea Continental Shelf Cases (*Germany v. Denmark; Germany v. Netherlands)* 1969. Anglo Norwegian Fisheries Case (*United Kingdom v. Norway)* 1951.

[26] International Court of Justice. List of All Cases. https://www.icj-cij.org/list-of-all-cases

[27] North Sea Continental Shelf Cases (*Germany v. Denmark; Germany v. Netherlands)* 1969.

[28] North Sea Continental Shelf Cases (*Germany v. The Netherlands)* Para. 85 – 101.

case[29], determining the maritime boundary between Somalia and Kenya by applying principles of equitable delimitation.[30]

As a generalist court with jurisdiction over a broad range of international law issues, the ICJ lacks specialization in maritime law. Cases involving technical aspects of maritime law, such as seabed mining, fisheries management, or environmental protection, may be more effectively addressed by specialized forums like ITLOS, which possess specific expertise in interpreting and applying UNCLOS provisions.[31]

In addition to legally binding judgements, the ICJ has the capacity to issue non-binding advisory opinions.[32] UN bodies are eligible to request an advisory opinion, which can be described as a judicial statement on a legal question.[33] As advisory opinions do not require consent from affected states, they are important tools in international law. Despite advisory opinions being non-binding, they still carry significant legal weight. Advisory opinions not only clarify and offer guidance on emerging issues or underexplored legal principles, but also serve as a diplomatic tool, preventing disputes from escalating. A few notable advisory opinions include the *1971 Namibia Opinion*[34], where ICJ declared South Africa's occupation of Namibia illegal leading to Namibia's independence, and the *2010 Kosovo Opinion*[35] where the court legitimized Kosovo's independence, leading to international recognition. More recently, Vanuatu led a global coalition to adopt a UN General Assembly resolution asking ICJ to clarify state obligations and legal consequences related to climate change.[36] The hearings concluded in

[29] Maritime Delimitation in the Indian Ocean *(Somalia v. Kenya)* 2021.

[30] Ibid. Para. 172 - 174.

[31] UNCLOS Art. 289. & Statute of the International Tribunal for the Law of The Sea, Art.15.

[32] Statute of the International Court of Justice. Art. 65.

[33] United Nations Charter. Chapter XIV. Art. 96.

[34] Legal Consequences for States of the Continued Presence of South Africa in Namibia (*South West Africa)* Notwithstanding Security Council Resolution 276 (1970).

[35] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 p. 403.

[36] Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change. A/RES/ 77/276.

December 2024, and the court has not yet announced when the advisory opinion will be delivered.[37]

2.2.3 Arbitration

If no declaration regarding preferred dispute settlement method is made under Article 287, or if the parties involved in the dispute cannot agree on a method for resolving it, the case will automatically be sent to an Annex VII arbitral tribunal. Thus, arbitration is the default procedure under UNCLOS. The parties can agree in advance to include an appeal process, but if they do not, the tribunals decision is considered final.[38] Special Arbitration under Annex VIII is also offered as one of the four choices under Article 287.

2.2.3.1. Arbitral Tribunal (Annex VII)

Acting as the default dispute settlement mechanism under UNCLOS, the Annex VII Arbitral Tribunal is one of the most frequently used dispute settlement forums.[39] An arbitral tribunal under Annex VII is created ad hoc, and the Permanent Court of Arbitration (PCA) often acts as the registry for annex VII arbitrations. PCA has in fact served as registry for 14 out of 15 arbitrations under Annex VII of UNCLOS.[40]

Arbitration is a flexible procedure, providing states with the opportunity to select arbitrators and shape the procedural rules and structure of the arbitration process.[41] Article 9 of Annex VII also enables continued proceedings despite the absence of one of the parties. One example of continued proceedings with only one participating party is the *South China Sea Arbitration*. The Philippines instituted arbitral proceedings against China due to disputes over maritime entitlements and territorial claims in the Soth China Sea. China adopted a position of non-acceptance, arguing that the tribunal lacked jurisdiction and that the case involved matters of sovereignty,

[37] Press Release 2024/81.
[38] Klein (2005) p. 123.
[39] UNCLOS Annex VII cases arbitrated under the auspices of the PCA. https://pca-cpa.org/en/services/arbitration-services/unclos/ (Accessed 5/1-2025).
[40] Ibid.
[41] UNCLOS Annex VII. Art. 3 & 5.

falling outside the scope of UNCLOS.[42] Despite Chinas rejection, proceedings continued, and the tribunal ruled in favor of the Philippines on almost all issues. However, China rejected the ruling, declaring it "null and void" and continued its activities in the South China Sea, including militarization and land reclamation. [43]

Furthermore, various disputes have been successful resolved through arbitration. The *Bay of Bengal Maritime Boundary Arbitration*[44] between Bangladesh and India, and *Barbados v. Trinidad and Tobago*[45] are examples demonstrating the success of UNCLOS arbitration. Overall, arbitration under UNCLOS is a mixed but valuable too, while not universally successful, many disputes have been resolved effectively and peacefully.[46]

2.2.3.2. Special Arbitration (Annex VIII)

Disputes of a particularly technical nature, concerning the interpretation or application of UNCLOS, can be subject to special arbitration under Annex VIII. Despite offering subject-matter experts, no cases have yet been subject to special arbitration under Annex VIII, leaving the method untested.

[42] Press Release. The South China Sea Arbitration (*The republic of the Philippines v. The People's Republic of* China. Press Release. 12 July 2016.

[43] Statement of the Ministry of Foreign Affairs of the People´s republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines. 12 July 2016.

[44] The Bay of Bengal Maritime Boundary Arbitration between the People's Republic of Bangladesh and the Republic of India. PCA Case No: 2010-16.

[45] Barbados v. Trinidad and Tobago. PCA Case No: 2004-02.

[46] Se for example: Guyana v. Suriname, PCA Case No: 2004-04. Eritrea v. Yemen, PCA Case No: 1996-04. Bangladesh v. India, PCA Case No: 2010:16.

3 International Tribunal for the Law of the Sea (ITLOS)

3.1 Historical and Legal Context

ITLOS was inaugurated in October 1996 and delivered its first judgement in *the M/V Saiga* case. Since then, the court has delivered 33 judgements and provisional measures.[47] The court was established as a specialized judicial body to resolve complex disputes regarding maritime law, and besides the main tribunal, the court also provides four permanent chambers, and several special chambers formed at the request of parties.[48]

The four permanent chambers consist of: the Chamber of Summary Procedure, the Chamber for Fisheries Disputes, the Chamber for Marine Environment Disputes and the Chamber for Maritime Delimitation Disputes. A fifth chamber, the Seabed Disputes Chamber, constitutes a separate judicial body within ITLOS and has exclusive jurisdiction over disputes concerning the interpretation of Part XI of UNCLOS, as well as over regulations and annexes governing activities in the Area.[49] Notably, as of December 2024, no chambers have issued a ruling.

ITLOS´s jurisdiction covers any dispute concerning the interpretation or application of the Convention (Art. 288(1)), cases explicitly referred to ITLOS in UNCLOS (Art. 292 and 290(5)) and over cases governed by a separate agreement conferring jurisdiction on the Tribunal[50].

UNCLOS Article 309 prohibits any reservations and/or exceptions to the convention unless explicitly permitted. There is no article permitting reservations to Part XV of UNCLOS concerning the settlement of disputes. However, Article 298 allows states to exclude certain categories of disputes from compulsory procedures. These categories include maritime delimitation

[47] The most recent being The "Zheng He" Case (*Luxembourg v. Mexico)* Case No. 33.
[48] ITLOS Statute. Annex VI, Art. 15.
[49] ITLOS Statute. Annex VI, Art. 14.
[50] ITLOS Statute. Art. 21.

disputes, military activities, disputes in respect of which the United Nations Security Council is exercising its functions and disputes concerning historic bays or titles. As of December 2024, approximately 40 states have submitted declarations under Article 298.[51] Even when states opt out, residual compulsory jurisdiction remains for disputes that do not fall within the excluded categories and arise from provisions of UNCLOS that the states have not opted out of.

3.2 Defining "effectiveness"

When discussing a court's "effectiveness," it is essential to first define what the term "effective" entails. According to the Oxford English Dictionary, "effective" is described as "that which is attended with a result or has an effect". [52] For international judicial bodies, the desired result is not merely the issuance of judgments but ensuring that states comply with them.

Even when an international court successfully delivers clear, reasoned, and legally sound judgments, the lack of enforcement mechanisms, means that these factors alone do not define the court's effectiveness. Instead, the willingness of states to comply with its decisions is a critical indicator of its effectiveness. Therefore, when evaluating a court's effectiveness, we are not only considering its ability to deliver judgments but, more importantly, the extent to which states comply with them.[53]

3.3 Provisional Measures

Provisional measures are temporary, legally binding orders issued by ITLOS to safeguard the rights of parties or prevent irreparable harm while a maritime dispute is pending adjudication.[54] Provisional measures are governed by Article 25 of ITLOS Statute, together with UNCLOS Article 290. Article 290

[51] The Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations. *Declarations and Statements.* https://www.un.org/Depts/los/convention_agreements/convention_declarations.htm (Accessed 1/1-2025).

[52] The Oxford English Dictionary (2025).

[53] Aloysius P. Llamzon, "Jurisdiction and Compliance in Recent Decisions of the International Court of Justice!, P. 815–852.

[54] UNCLOS Art. 290(1).

stipulates three primary criteria that must be fulfilled for ITLOS to prescribe provisional measures. First, ITLOS must determine prima facie[55] jurisdiction over the case. Secondly there must be an urgent need to protect the rights of a party or to prevent harm. Finally, ITLOS must determine that there is a risk of irreparable harm.

As of December 2024, ITLOS has been approached with requests for provisional measures in eight cases.[56] Amongst these, some have proven particularly significant. Notable cases concerning marine environmental protection include the 2001 *MOX Plant* case[57], and the 2003 *Land Reclamation* case.[58] Both cases highlight that provisional measures can act as a judicial tool to enforce obligations such as joint monitoring, environmental protection and risk assessment, all while the main dispute remains unresolved.[59] In the *Land Reclamation* case, both Malaysia and Singapore fully complied with the ITLOS order, and the main dispute was later resolved in 2005 largely due to actions ordered by ITLOS through provisional measures. In the *Mox Plant* case however, the United Kingdom acknowledged the ITLOS order, but only partially complied. The case therefore underscores the limitation of ITLOS (and other international judicial bodies) in ensuring full compliance.

The *Southern Bluefin Tuna* case further highlights the different roles provisional measures can play.[60] In the *Southern Bluefin Tuna* case ITLOS prescribed two categories of provisional measures, one requiring the parties to refrain from a particular action (non-aggravation measure), and one requiring both parties to act (positive measures). As Japan did not comply with any of the provisional measures ordered, the case is often cited as an

[55] A latin term meaning "at first glance".

[56] ITLOS Case No: 3, 4 10, 12, 20, 22, 24, 26, 27.

[57] The MOX Plant case (*Ireland v. United Kingdom),* Case No. 10.

[58] Land Reclamation in and around the Straits of Johor (*Malaysia v. Singapore)*, Case No. 12.

[59] Tanaka, Yoshifumi. 2014, "Provisional Measures Prescribed by ITLOS and Marine Environmental Protection" P. 365-367.

[60] Southern Bluefin Tuna Cases (*New Zealand v. Japan; Australia v. Japan)* case No.3-4.

example of ITLOS's limited enforcement power and competing state interests.[61]

3.4 Prompt Release of Vessels and Crews

The prompt release of vessels and crews is a unique mechanism under UNCLOS Article 292, allowing a detained vessel's flag state to seek its release upon the posting of a reasonable bond or financial security. This procedure balances the sovereign rights of coastal states to enforce laws within their EEZs, with the rights of flag states to ensure maritime activities continue without undue disruption.[62] The prompt release of vessels is sometimes utilized as a temporary measure within the framework of provisional measures under Article 290. However, it is important to distinguish between the use of prompt release as part of provisional measures under Article 290 and the independent procedural mechanism established under Article 292.

The use of Article 292 has been highly successful, likely due to its procedural clarity, efficiency, fairness, and adaptability.[63] As prompt release is structured as an independent procedure from the main dispute, states can comply with its orders without risking any influence on the merits of the underlying case.

3.5 Advisory Opinions

Advisory opinions under ITLOS are legal opinions provided by the Tribunal on questions of law related to UNCLOS. Neither UNCLOS nor ITLOS Statute contains any articles granting the Tribunal right to issue advisory opinions, nonetheless, the possibility arises under Article 138 of the Rules of

[61]Tanaka, Yoshifumi. 2014, "Provisional Measures Prescribed by ITLOS and Marine Environmental Protection" pp. 365-367.

[62] Trevisanut, Seline. 2017. "Twenty Years of Prompt Release of Vessels: Admissibility, Jurisdiction, and Recent Trends." P. 300–312.

[63] For example: ITLOS Case No: 5, 6, and 8.

the Tribunal.[64] Article 138 clarifies that ITLOS can provide advisory opinions when a specific international agreement confers such jurisdiction. Thus, ITLOS does not independently create jurisdiction to issue advisory opinions, but instead relies on international agreements to grant it so.

Furthermore, the Seabed Disputes Chamber is prescribed the right to issue advisory opinions through UNCLOS Article 191. The provision grants the Chamber right to clarify legal questions related to the management and regulation of the Area and its resources, under the authority of the International Seabed Authority.

Advisory opinions from ITLOS are not frequently issued. As of December 2024, ITLOS and the Seabed Disputes Chamber have only issued a total of three advisory opinions.[65] One of them has however gained great medial attention. In 2024 the Commission of Small Island States on Climate Change and International Law submitted a request for an advisory opinion regarding the obligations of states under UNCLOS to prevent, reduce and control pollution of the marine environment in relation to climate change impacts, such as sea level rise and ocean acidification. On May 21, 2024, ITLOS delivered its advisory opinion, marking the first time an international tribunal has addressed the intersection of climate change and the law of the sea.[66]

3.6 Landmark Cases

3.6.1 The M/V ”SAIGA” (No. 1 and No. 2) (*Saint Vincent and the Grenadines v. Guinea*)

The *M/V Saiga* case between Saint Vincent and the Grenadines v. Guinea is a landmark dispute that unfolded in two phases before ITLOS, known as case

[64] International Tribunal for the Law of the Sea. Rules of the Tribunal. ITLOS/8. 17 March 2009.

[65] ITLOS Case No: 17, 21 and 31.

[66] Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law. Case No. 31.

No. 1 and Case No. 2. Together, they clarified key principles regarding flag state rights, coastal state jurisdiction, and the use of force in maritime enforcement under UNCLOS.

In *M/V Saiga case No. 1*, Saint Vincent and the Grenadines initiated proceedings under Article 292 of UNCLOS, which ensures the prompt release of vessels and crew. Guinea had detained the M/V "Saiga", an oil tanker flying the flag of Saint Vincent and the Grenadines, for allegedly supplying fuel to fishing vessels in Guinea's Exclusive Economic Zone (EEZ) without paying import duties. Guinea's actions included the use of force, the confiscation of cargo, and the detention of the crew. ITLOS issued provisional measures, ordering Guinea to promptly release the vessel and crew upon the posting of a $400,000 bond.[67] This decision marked ITLOS's first exercise of its prompt release jurisdiction.

Following the vessel's release, *M/V "Saiga" case No. 2* addressed the broader legal issues. Saint Vincent and the Grenadines challenged Guinea's actions as violations of UNCLOS provisions, including freedom of navigation (Articles 58 and 87) and the limitations on coastal state powers in the EEZ. ITLOS ruled largely in favor of Saint Vincent and the Grenadines, condemning Guinea's use of excessive force and its failure to adhere to the proper procedures for hot pursuit under Article 111. The tribunal affirmed the vessel's flag state rights under Articles 91 and 92, declaring Guinea's jurisdictional claims invalid.[68]

ITLOS ordered Guinea to compensate Saint Vincent and the Grenadines with over $2 million for economic losses, harm to the crew, and confiscated cargo. While Guinea complied relatively quickly with the prompt release order in Case No. 1, compliance with the compensation ruling in Case No. 2 was delayed. Guinea initially resisted fulfilling its obligations, and it was only

[67] Para. 85 and 86(3).
[68] Para. 44.

through diplomatic pressure and negotiations that the award was eventually paid.[69]

3.6.2 Delimitation of the maritime boundary in the Bay of Bengal (*Bangladesh v. Myanmar*)

The *Bay of Bengal Maritime dispute* between Bangladesh and Myanmar concerned the delimitation of the maritime boundary between the two nations in the Bay of Bengal, including the territorial sea, the EEZ, the continental shelf and the extended continental shelf (ECS)[70]. The case arose from a long-standing dispute where Bangladesh argued for an equitable delimitation[71] based on its concave coastline, and Myanmar, in contrast, advocated for the use of the equidistance method[72], emphasizing geographical proximity.

In its ruling, ITLOS determined a single maritime boundary using an equitable solution approach[73]. The tribunal considered relevant circumstances, such as Bangladesh's concave coastline, and the adjusted the boundary line to prevent unjustified disadvantages. ITLOS also addressed the delimitation of the extended continental shelf, becoming the first tribunal to adjudicate this issue. ITLOS affirmed that both states had overlapping entitlements to the extended continental shelf[74], a significant precedent in maritime law.[75]

[69] Oxman, Bernard H & Bantz, Vincent. "The M/V 'Saiga' (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment (ITLOS Case No. 2) P. 140–50.

[70] The extended continental shelf is the seabed and subsoil beyond 200 nautical miles, which a coastal state may claim if it meets certain geological and legal criteria set by Article 76 of UNCLOS.

[71] Equitable delimitation refers to the process of creating a maritime boundary that achieves fairness rather than strict adherence to prefined methods, such as the equidistance line.

[72] The equidistance method is where a boundary is drawn to that every point is equidistant from the baselines of two neighboring states.

[73] The equitable solution approach is a method used to achieve a fair and balanced result, considering the specific geographic, legal, and practical circumstances of a case.

[74] Para. 449.

[75] Anderson, D. H. "Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar). P. 817–24.

Both Bangladesh and Myanmar accepted ITLOS decision shortly after it was issued, and unlike other international maritime disputes, there were no reports of non-compliance or objections raised by either party after the judgement. Both nations adhered to the newly established maritime boundary without further conflict. The decision allowed both Bangladesh and Myanmar to proceed with their activities in their newly delimited maritime zones, equally respecting each other's rights in the respective territory.

3.6.3 The "Arctic Sunrise" Case (*Kingdom of the Netherlands v. Russian Federation*)

The *Arctic Sunrise* case between The Netherlands and Russia arose from a 2013 Greenpeace protest against oil drilling in the Arctic. The protest targeted Russia´s Prirazlomnaya offshore oil platform in the Pechora Sea, within Russia's exclusive economic zone. Activists aboard the Greenpeace vessel Arctic Sunrise, flying the flag of the Netherlands, attempted to scale the platform to highlight environmental concerns about arctic drilling. In response, Russia deployed the Federal Security Service (FSB), boarded the Arctic Sunrise, detained its 30 crew members, and towed the vessel to the port of Murmansk.

The Netherlands filed a case through ITLOS, seeking provisional measures to secure the immediate release of the Arctic Sunrise and its crew. On November 22, 2013, ITLOS ordered Russia to release the crew and vessel, and allow the Netherlands to post a €3.6 million bond as a security. Russia then invoked its Article 292 declaration, arguing that the case involved law enforcement activities within its EEZ and military activities, and therefore fell under the excluded categories. Russia refused to comply, maintaining that it did not recognize the Tribunals jurisdiction over the dispute.[76] Despite Russia's stance, ITLOS proceeded with the case and ruled in favour of the Netherlands.

[76] Note Verbal No. 3838/H from the Embassy of the Russian Federation in Germany to the Tribunal.

While ITLOS ordered the release of the Arctic Sunrise and its crew upon the posting of a bond, Russia refused to comply, reflecting the limitations of enforcement mechanism. Nonetheless, in December 2013 Russia released the crew under a domestic amnesty law, unrelated to the Tribunals decision. The Arctic Sunrise was returned in June 2014, heavily damaged.[77] The Arctic Sunrise case later proceeded to an Annex VII arbitral tribunal, which in 2015 ruled that Russia violated UNCLOS by unlawfully seizing the vessel and detaining its crew, affirming the Netherlands rights as the flag state. The tribunal awarded compensation for damages to the Arctic Sunrise, loss of use, and harm to the crew.[78]

[77] Greenpeace UK. ”Putin vs Greenpeace; the story of the Arctic 30” https://www.greenpeace.org.uk/news/arctic-30-putin-greenpeace/ (Accessed 17/12-2024).

[78] The Arctic Sunrise Arbitration (*Netherlands v. Russia)* PCA Case No: 2014-02.

4 Discussion and Conclusion

The detailed dispute settlement regulations under UNCLOS provide a broad basis for examining state adherence to procedures and judgments. Before resorting to ITLOS, which is the main focus of this text, states are obligated under Article 283 to first attempt negotiations or conciliation. Non-binding procedures, such as negotiations or non-compulsory conciliation, often achieve high compliance rates when the power balance between disputing parties is similar. Agreements reached through these procedures typically reflect the mutual consent of the parties, making them more likely to perceive the agreement as beneficial and comply with its terms. In contrast, disputes brough to ITLOS and other binding dispute settlement mechanisms, are inherently more complex, as they involve parties that have already failed to reach a mutual agreement.

As Annex VII Arbitration serves as the default dispute settlement mechanism under UNCLOS, its effectiveness varies significantly. When both parties actively engage in procedural rules and collaborate in selecting arbitrators, compliance rates are typically high. However, in cases where one party refuses to participate, such as in the South China Sea Arbitration, compliance rates are predictably very low. In instances where states choose alternative binding mechanisms, such as ITLOS or the ICJ, they have deliberately selected a forum they believe suits their needs. This conscious choice may slightly increase the likelihood of successful enforcement, as it demonstrates a certain level of procedural acceptance and commitment from both parties.

The principal judicial organ of the UN, the ICJ, has historically demonstrated is effectiveness while also highlighting the limitations of enforcing international law. Together, the ICJ and ITLOS serve as essential mechanisms for peaceful and impartial dispute resolution, playing significant roles in interpreting and advancing international maritime law. Yet, ITLOS still has progress to make before reaching the “world court” status of the ICJ.

The effectiveness of international judicial bodies depends on factors beyond those affecting domestic courts, which are expected to deliver clear, reasoned, and legally sound judgments. The perception and recognition of a court, for instance, significantly influences its impact. Courts regarded as authoritative and possessing international legitimacy, such as the ICJ, exert greater moral and political pressure on states to comply with their rulings.

While the ICJ enjoys broad global standing, a comparison with ITLOS reveals shared challenges, particularly regarding enforcement and compliance rates. These issues appear to stem not from the authority of the forum itself but from external factors, which will be explored further below.

When analysing ITLOS, it becomes evident that compliance varied depending on the nature of the dispute. Before addressing its limitations and challenges, it is important to recognize that overall compliance rates with ITLOS judgements are generally high. That said, if ITLOS achieved a 100% compliance rate, this text would instead focus on its unprecedented success. Clearly, this is not the case, as limitations and challenges remain part of its operational reality.

As discussed earlier, ITLOS has a range of tools to address disputes. Provisional measures, particularly those concerning the prompt release of vessels, tend to achieve high compliance rates. This is likely because the legal standards in such cases are straightforward, addressing procedural rather than politically sensitive issues. Disputes involving the prompt release of vessels and crew are narrowly defined, rarely touching upon politically sensitive matters such as sovereignty or boundary disputes. Therefore, compliance with such rulings do not require states to compromise on sovereignty, or abandon broader legal claims, leading to high compliance rates and effective judgements.

ITLOS becomes less effective when dealing with disputes regarding boundary delimitation, sovereignty linked cases, or environmental issues. The *Arctic Sunrise* case exemplifies this, as the nature of the dispute significantly contributed to Russia's non-compliance. Russia perceived the case as a direct

challenge to its sovereignty Arctic activities, particularly its oil drilling operations within its EEZ. Additionally, Greenpeace´s broader political activism led Russia to view the case as exceeding the scope of maritime law, further undermining its willingness to comply with ITLOS´s ruling.

In contrast, the *Bay of Bengal* case, despite being a politically sensitive dispute concerning maritime boundaries, resulted in swift compliance by both Bangladesh and Myanmar. While this may seem contradict the argument that the nature of the case determines ITLOS's effectiveness, the key factor here lies in the relative power dynamics of the states involved. Unlike Russia, which hold significant geopolitical influence to resist international rulings, Bangladesh and Myanmar operate on more equal geopolitical footing. Neither state possessed the leverage to ignore international law without risking severe diplomatic or reputational consequences. This underscores a broader pattern: smaller states often place greater value on international legal mechanisms like ITLOS, as these platforms provide neutral grounds for dispute resolution with protections against more powerful neighbours.

To conclude, ITLOS's effectiveness depends on a wide range of factors. While its technical expertise and maritime specialization are unquestionable, the success of its judgments does not necessarily correlate with their legal soundness. Instead, the nature of the dispute and the power dynamics of the states involved are the most significant determinants of compliance. This dynamic is also evident in other international legal forums such as the ICJ and arbitral tribunals. Ultimately, states remain the primary lawmakers in international law, and the effectiveness of a judicial body like ITLOS is as effective as states are willing to allow it to be.

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