THE LAW OF THE SEA TRIBUNAL AND DISPUTE SETTLEMENT: DOES THE JURISPRUDENCE JUSTIFY ITS EXISTENCE?

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INTRODUCTION

Ushering a new era in International Law, the United Nations Convention on the Law of the Sea was entered into force on November 16, 1994 after more than eight years of protracted and arduous negotiations.[1] The 1982 U.N. Convention on the Law of the Sea (*Hereinafter* UNCLOS or Convention) not only introduced comprehensive substantive change to the law of the sea, but also introduced a system of compulsory jurisdiction, which included the creation of a standing international tribunal, the International Tribunal for the Law of the Sea (*Hereinafter* ITLOS or Tribunal). The Tribunal, which is headquartered in Hamburg, Germany, functions towards realizing its objective "to be a user-friendly, cost-effective, and efficient institution."[2]

The establishment of the ITLOS was not without controversy. The availability of the International Court of Justice (*hereinafter* ICJ),which has considerable experience in deciding law of the sea disputes and other dispute settlement options for law of the sea cases caused some quarters to worry that the ITLOS might contribute to divergent jurisprudence.[3] Supporters of the ITLOS point out, however, that the ITLOS can handle cases involving international organizations, individuals, and corporations that the ICJ, by virtue of its Statute, is precluded from hearing.[4] Proponents of the ITLOS also argue that the availability of a quick and efficient specialized tribunal, along with judges who possess acknowledged expertise, make the creation of the ITLOS a

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[1] United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, U.N. Doc. A/CONF.62/122 (1982), 21 I.L.M. 1261 (1982)

[2] Gerald A. Malia, 'The New "International Tribunal for The Law of the Sea": Prospects For Dispute Resolution At The "Sea Court", (1995) 7 GEOIELR 791.

[3] Manfred Lachs, *The Revised Procedure of the International Court of Justice, in Essays on the Development of the International Legal Order* (Frits Kalshoven et al. eds., 1980) 43-44

[4] *See* John E. Noyes, 'The International Tribunal for the Law of the Sea', (1998) 32 CNLILJ 109.

worthwhile enterprise.[5] Another pertinent concern entails the apparent dearth in the submission of disputes to the Tribunal. Despite the potential breadth of its jurisdiction and the apparent compulsion contained in the Convention, in the more than fifteen years since the Convention entered into force, the Tribunal has had just sixteen claims come before it, only two of which were brought on the merits.[6] Further, the jurisdiction of the Tribunal has been almost exclusively limited to what might be referred to as "incidental proceedings"—claims for provisional measures and for the prompt release of vessels which have been arrested, ordinarily for contravening coastal states' regulations regarding fishing in the exclusive economic zone (EEZ).

This article, through a discussion of the jurisdictional aspects and jurisprudence of the Tribunal, seek to answer the questions pertaining to its role and relevance as an international adjudicatory mechanism.

THE CONTEXT: THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

It cannot be gainsaid that Arvid Pardo, the then Malta's Ambassador to the United Nations, was the driving spirit behind the first comprehensive agreement on law of the seas. The previous conventions under the aegis of the United Nations were "half baked" owing to unsuccessful negotiations, and hence did not produce any tangible result in the form of new agreements to successfully deal with the entailing legal issues which demanded immediate attention. It was Pardo's clarion call for "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction" that mobilised the movement for updating the archaic customary law with respect to the sea to keep up with political and technological changes.[7] Many international law scholars and diplomats lauded the Convention as the 'modern constitution of the oceans' as its 320 Articles and 9 Annexes not only encapsulated legal guidelines addressing many of the problematic issues that previous conventions had been unable to settle but also proclaimed a new agenda for the oceans with a number of innovative concepts such as exclusive economic zones, archipelagic status, and deep sea bed.[8]

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[5] *See* Jonathan I. Charney, 'The Implications of Expanding International Dispute Settlement Systems: The 1982 Convention on the Law of the Sea', (1996) 90 AJIL 69, 70.

[6] *See* The List of Cases, available online at < http://www.itlos.org/start2_en.html> (Last visited on January 2, 2010)

[7] Dolliver M Nelson, 'Reflections on the 1982 Convention on the Law of the Sea', 28, 32 in (David Freeston et al (eds.) , *The Law of the Sea- Progress and Prospects* (OUP, 2006) (*Hereinafter* David Freeston et al)

[8] *Supra* note 1.

While most treaties relating to the international law of the sea have not provided for obligatory binding third-party dispute settlement, the 1982 Convention contains extensive provisions on dispute settlement. The Convention allows States Parties to invoke the obligatory binding third-party dispute settlement mechanisms provided therein in many oceans law disputes.[9] The jurisdiction of any international court or tribunal over an interstate dispute ultimately rests on the consent of the parties involved, and acceptance of the Convention expresses that consent for States Parties.

Why would states mutually consent to the jurisdiction of international tribunals before a particular dispute arose? To answer this question, it is important to understand the negotiating context of the Convention's dispute settlement provisions. The Convention was negotiated during a time of considerable turmoil in ocean-related disputes. Technological developments had greatly increased the capacity to harvest both living and nonliving ocean resources, thereby increasing tensions over maritime boundaries. Some developing states were asserting sovereignty over broad coastal zones. Maritime powers, on the other hand, sought to safeguard their hitherto unimpeded passage through straits and other navigational freedoms. States also disagreed about how to address numerous other issues, such as the marine environment, marine scientific research, and a regime for mining the sea bed beyond the limits of national jurisdiction.

Negotiations at the Third United Nations Conference on the Law of the Sea (UNCLOS III), which led to the 1982 Law of the Sea Convention, were extraordinarily complex. They involved more than 150 states and lasted for nine years (preceded by an additional six years of U.N. committee preparatory work). Although the Convention that emerged from UNCLOS III accepts extensive coastal state control over broad coastal zones, it limits the broadest unilateral claims of sovereignty over these zones and guarantees navigational freedoms to maritime powers. The Convention reflects compromises and trade-offs concerning virtually every issue relating to the oceans.[10]

Many negotiators at UNCLOS III thought that compulsory dispute settlement mechanisms could help cement the compromises embodied in the Law of the Sea Convention. Some delegates from developing states believed that including third-party dispute settlement provisions in the Convention would counterbalance political, economic, and military pressures from powerful states.[11] The United States sought such provisions to deter new unilateral state claims that had questionable legal support

[9] Tullio Treves, A System for Law of the Sea Dispute Settlement, 417, 418 in David Freeston et al

[10] For studies of the UNCLOS III negotiations, *see* Edward L. Miles, *Global Ocean Politics: The Decision Process at the Third United Nations Conference on the Law of the Sea* 1973-1982 (1998)

[11] A.O. Adede, *The System for Settlement of Disputes Under the United Nations Convention on the Law of the Sea: A Drafting History and Commentary* (OUP, 1987)

and to increase the weight given to the positive law norms set out in the Convention. U.N. officials also favored strong dispute settlement provisions, believing these could help maintain the integrity of the Convention's compromise "package deal."[12]

However, not all states favoured the provisions for obligatory, binding third-party dispute settlement. Two sets of tensions were evident. First, while many states favored strong third-party dispute settlement, others were skeptical. The skeptics included several African states, which traditionally relied on informal, consensus-building methods of dispute settlement in their own cultures. Developing states distrusted the ICJ throughout the 1970s because they believed that it favored developed states.[13] Socialist states, reflecting their state-centric positivist views of international law, questioned the need for third-party tribunals that possessed the authority to issue binding decisions in a wide range of cases. The Law of the Sea Convention was the first general convention in which the Soviet Union, its allies, and African states agreed to provisions on binding third-party dispute settlement.[14]

THE UNCLOS DISPUTE SETTLEMENT REGIME

Part XV deals with the settlement of disputes concerning the interpretation or application of UNCLOS. The first section of Part XV begins with a recitation of the general obligation on states to settle their disputes by agreement and to do so peacefully.[15] It preserves the right for states to agree at any time to settle their disputes by a means of their choice, in which case, the dispute is exempt from the Part XV procedures except where no settlement has been reached and the agreement does not exclude any further procedure. Dispute settlement procedures in other general, regional or bilateral agreements which entail binding decisions are to apply in lieu of the Part XV procedures.[16] In all cases, when disputes arise states are to expeditiously exchange views regarding their settlement and may elect to proceed to voluntary conciliation.[17]

Where, however, states have been unable to peacefully resolve their disputes and no other procedure for resolution of the dispute has otherwise been agreed upon then,

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[12] *Ibid.*

[13] R.P. Anand, *Attitude of the "New" Asian-African Countries Toward the International Court of Justice, in Third World Attitudes Toward International Law* 163 (Frederick E. Snyder & Surakiart Sathirathai eds., 1987).

[14] *See* Louis B. Sohn, 'Peaceful Settlement of Disputes in Ocean Conflicts: Does UNCLOS III Point the Way?', (1983) 46 L. & CONTEMP. PROBS. 195, 196.

[15] UNCLOS, *Supra* note 1, art 279.

[16] *Ibid.*, art 282

[17] *Ibid.*, arts. 283 and 284.

under Section 2 of Part XV, they are obliged to submit their dispute to either the International Tribunal for the Law of the Sea, the International Court of Justice, an Arbitral Tribunal established pursuant to Annex VII or a special Arbitral Tribunal established pursuant to Annex VIII. The choice of tribunal will depend on prior declarations made by the parties, and when no common choice is agreed then Annex VII arbitration is the default position.[18] In other words an Annex VII arbitral tribunal is the norm unless states have agreed otherwise. The court or tribunal so chosen has jurisdiction over any dispute concerning the interpretation or application of UNCLOS, or of any other international agreement related to the purposes of UNCLOS where the parties so agree, subject to a number of exceptions set out in Section 3 of Part XV.[19]

Broadly speaking, these exceptions relate to the exercise by coastal states of their sovereign rights within the exclusive economic zone (EEZ) relating to conservation and management of living resources and the conduct of marine scientific research.[20] States are also at liberty to make declarations exempting disputes relating to maritime boundary delimitation, historic bays or titles, military activities, law enforcement activities, or disputes in respect of which the United Nations Security Council is exercising its functions, from the compulsory regime.[21]

In the lead up to the entry into force of UNCLOS, its compulsory dispute settlement provisions were the subject of heavy criticism. It was pointed out that the limitations and exclusions in Part XV would ensure that a broad range of ocean disputes would not be subject to the compulsory procedures at all.[22] Indeed, the only disputes to which compulsory settlement procedures might definitely apply are those relating to alleged contraventions of the high seas freedoms of fishing, navigation, overflight, laying of submarine cables and pipelines, or other internationally lawful uses of the sea in the exclusive economic zone, and disputes relating to the contravention by coastal states of specified international rules and standards for the protection or preservation of the marine environment.

Criticism was also directed at the provisions for the establishment, and selection, of a wide range of tribunals on the basis that each tribunal listed would clearly have different functions and there was no way to ensure that their procedures and modus operandi

[18] *Ibid.*, arts. 286 and 287

[19] *Ibid.*, art. 288

[20] *Ibid.*, art. 297

[21] *Ibid.*, art.298

[22] Shigeru Oda 'Some Reflections on the Dispute Settlement Clauses in the United Nations Convention on the Law of the Sea, in J Maraczk (ed.) *Essays in International Law in Honour of Judge Manfred Lachs* (Martinus Nihoff, Zoetermeer (The Netherlands), 1984).

would be appropriate to the dispute before them. Several judges of the International Court of Justice, in particular, warned that the creation of a plethora of tribunals could only lead to fragmentation of international law and the law of the sea due to the emergence of competing interpretations in a non-uniform manner from inconsistent decisions of the different tribunals, each having a different jurisdictional scope and expertise.[23]

Fears about the proliferation of tribunals have not been shared by other commentators. For instance, in 1997, Boyle analysed how far the fears of fragmentation and the potentially adverse role of ITLOS were justified concluding, with respect to the possible adverse implications of the proliferation of tribunals, that it was still "too early to assess how far competition between different international tribunals [would] promote the settlement of disputes, or whether it [would] fragment either the substantive law of the sea or international law in general".[24]

THE TRIBUNAL AND ITS JURISDICTION

A. Structure and Composition

The International Tribunal for the Law of the Sea, which became operational on October 1, 1996, is the specialized international judicial body established for the settlement of disputes concerning the interpretation or application of the Convention on the Law of the Sea, and for rendering advisory opinions.[25] The Tribunal is, at present, the largest world-wide judicial body, being composed of twenty-one judges, who are recognized experts in the field of the law of the sea. They are elected by the States Parties to the Convention for a term of nine years, whereby the term of one-third of the members of the Tribunal expires every three years. The composition of the Tribunal must ensure adequate representation of the principal legal systems of the world, and an equitable geographical distribution. The States Parties—which hold annual meetings in New York—have agreed to elect five judges each from Africa and Asia, four each from Latin American and Caribbean States, as well as Western European and Other States, and three from the Group of Eastern European States. This composition of the Tribunal

[23] *See* for example Judge Stephen M Schwebel, President of the International Court of Justice (Address to the United Nations General Assembly, 26 October 1999); Judge Gilbert Guillaume, President of the International Court of Justice (Address to the United Nations General Assembly, 26 October 2000). Both texts available online at <http://www.icj-cij.org/icjwww/ipresscom/iprstats/htm> (Last visited January 10, 2010)

[24] A Boyle, 'Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction', (1997) 46 ICLQ 37, 41.

[25] *Supra* note 7, p.35

clearly shows that added weight has been given to developing countries in comparison with the International Court of Justice, where, in practice, judges from the five permanent members of the United Nations Security Council occupy one-third of the fifteen seats.[26] In view of its larger size, the Tribunal is also more representative of the various legal systems and the different regions of the world. If the Tribunal does not include upon the bench a judge of the nationality of a party to dispute, that party may designate a person of its choice to sit as a judge ad hoc.

B. The Breadth of Tribunal's Jurisdiction

There are a number of possible interpretations regarding the extent of the Tribunal's jurisdiction, both in relation to the nature of the claims that may be brought before it and in relation to entities that may access the Tribunal. With regard to the subject matter of claims brought before the Tribunal, there are two relevant provisions in the UNCLOS: Article 288 of the UNCLOS and Annex VI, Article 21.

(i) Claims within the Tribunal's Jurisdiction

Article 288 refers to the jurisdiction of all the possible compulsory dispute resolution bodies and relevantly provides that each shall "have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part"[27] and that each "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."[28]

Article 21 of Annex VI envisages a more expansive jurisdiction and provides that "the jurisdiction of the Tribunal comprises all disputes and all applications submitted in accordance with the Convention, and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal."[29]

Both articles enable parties to refer any dispute concerning the UNCLOS and related international agreements to the Tribunal. However, Article 288(2) arguably limits the

[26] A.E. Boyle, 'The International Tribunal for the Law of the Sea and the Settlement of Disputes', in J.J. Norton, M. Andenas & M. Footer eds, *The Changing World of International Law in the Twenty-First Century: A Tribute to the Late Kenneth R. Simmonds*, 99, 118 (1998).

[27] UNCLOS, *Supra* note 1, art. 288(1) (referring to the Tribunal's compulsory jurisdiction)

[28] *Ibid.* art. 288(2)

[29] *Ibid.* annex VI, art. 21

Tribunal's consensual jurisdiction[30] to the interpretation or application of any "international agreement related to the purposes of the Convention," whereas Annex VI, Article 21 refers to "any other agreement which confers jurisdiction on the Tribunal." Furthermore, Article 288(2) confines the Tribunal's consensual jurisdiction to "international agreements," whereas Article 21 refers only to "agreements."[31]

A broad approach based on Article 21 of Annex VI appears to support claims to use the Tribunal to resolve any dispute, regardless of whether it relates to the law of the sea or whether it is based on an international agreement.[32] An agreement to bring the dispute to the Tribunal is all that would be necessary.

There are, of course, arguments that support a restrictive interpretation of the Tribunal's jurisdiction. For example, Article 1(4) of Annex VI provides that reference of a dispute to the Tribunal shall be governed by Parts XI and XV, which suggests that Annex VI is subordinate to Part XV and, therefore, to Article 288.[33] It might also be argued that the Tribunal's jurisdiction is limited by the law that it is to apply. Article 293(1) provides that "[a] court or tribunal having *7 jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention."[34]

This conflict might be resolved by noting that Article 293 refers to law applicable to a court or tribunal "having jurisdiction under this section,"[35] and is therefore arguably only applicable if the parties are relying on jurisdiction under the section in which Article 293 appears, that is, Part XV, Section 2, but that it is not applicable to applications made under Annex VI, Article 21. However, it has been suggested that the scope of Article 293 is even narrower than this and does not apply to any jurisdiction based on Part XV, Section 2, but only applies to the Tribunal's compulsory jurisdiction under this section. Part XV, Section 2 refers not only to the Tribunal's compulsory jurisdiction, but to its consensual jurisdiction, as well.[36]

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[30] Article 288(1), not surprisingly, limits the compulsory jurisdiction of the Tribunal to cases concerning the interpretation or application of UNCLOS. *Ibid.* art. 288(1).

[31] *See* Gudmundur Eiriksson, *The International Tribunal for The Law of the Sea* 112-13 (2000).

[32] *Supra* note 5.

[33] *Supra* note 31.

[34] UNCLOS, *Supra* note 1, art. 293(1).

[35] *Ibid.* art. 293(1).

[36] *See Ibid.* art. 288(2).

(ii) Access to the Tribunal

The Tribunal is clearly open to States Parties.[37] However, reference to Annex VI, Article 20(2) supports the argument that the Tribunal's consensual jurisdiction is also open "to entities other than States Parties ... in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case." If the Tribunal is open to entities other than States Parties, this provides further support for a broad interpretation of the potential subject matter of the Tribunal's consensual jurisdiction. It would make little sense to enable other entities to bring claims before the Tribunal but to then limit the law applicable to their dispute to "the Convention and other international law not incompatible with it."[38] Therefore, it is submitted that the objections to a broad jurisdiction cannot hold and that an expansive interpretation of the Tribunal's consensual jurisdiction must prevail.

Despite the creation of this specialist standing tribunal with its potentially extensive jurisdiction, the claims brought before it have been limited both in number and in scope. This inevitably raises the question of why its work has been restricted. The compulsory dispute settlement procedures under the 1982 Convention are based on the principle of freedom of choice. States are entitled to choose which dispute settlement process they would like to apply, both prior to any dispute arising and after a dispute has arisen. It is only if dispute settlement based on choice fails that the compulsory procedures take effect. It is therefore relevant to examine the extent to which states can and do choose to bring claims to the Tribunal.

JURISPRUDENCE OF THE TRIBUNAL

A. Cases Relating to Provisional Measures

The Tribunal may be requested to prescribe provisional measures in two situations, first where a dispute on the merits has been submitted to the Tribunal, and second when a dispute on the merits has been submitted to an arbitral tribunal, pending its constitution.

It is interesting to note in this regard important innovations introduced by the Convention. First, the measures prescribed by the Tribunal are binding upon the parties to the dispute. Second, the Tribunal may prescribe provisional measures not only to preserve the respective rights of the parties to the dispute, but also to "prevent serious harm to the marine environment." In addition, the Tribunal may follow up the measures

[37] *Ibid.* annex VI, art. 20(1).

[38] *Ibid.* art. 293.

it has prescribed by requesting the parties to submit reports on compliance.[39] The Tribunal's power to prescribe provisional measures has already been invoked in four cases dealing with the protection of the marine environment: the Southern Bluefin Tuna Cases, the MOX Plant Case, and the Case concerning Land Reclamation by Singapore in and around the Straits of Johor.

The record of the Tribunal on environmental disputes is a positive one, despite the absence of any opportunity to decide such a case on the merits.[40] The aforementioned cases have enabled the Tribunal to contribute to the development of international environmental law, in particular by emphasizing the duty of cooperation, the notion of prudence and caution, and the importance of procedural rights, as essential components of environmental obligations. In its orders for provisional measures, the Tribunal followed the line of adopting a pragmatic approach and prescribing measures which, in its view, would assist the parties to find a solution.

B. Cases Relating to Prompt Release of Vessels and Crews

The compulsory jurisdiction of the Tribunal encompasses cases in which it is alleged that by detaining a vessel flying the flag of another State and/or its crew for certain offences—for instance in respect of illegal fishing or pollution—a State has violated the provisions of the Convention for the prompt release of the vessel and its crew upon the posting of a reasonable bond or other financial security. It is important to note that in prompt release proceedings, the Tribunal may deal only with the question of the release of the vessel without prejudice to the merits of any case before the appropriate domestic forum in respect of the vessel, its owner or its crew.[41] In its jurisprudence, the Tribunal has strictly applied this requirement of the Convention.[42]

The prompt release procedure before the Tribunal is also characterised by its swiftness. The Tribunal, according to its Rules, shall give priority to applications for the release of vessels or crews over all other proceedings. The Tribunal has so far been seized of applications for prompt release in nine cases, nearly all of them connected with fisheries. The first such case concerned an application by Saint Vincent and the Grenadines for

[39] Statement by President Wolfrum to the Informal Meeting of Legal Advisers of Ministries of Foreign Affairs, New York, October 24, 2005, 5, available online at <http://www.itlos.org/start2_en.html> (Last visited January 23, 2010).

[40] *See* Alan Boyle, 'The Environmental Jurisprudence of the International Tribunal for the Law of the Sea', (20007) 22 The Int'l J. of Marine and Coastal L. 369.

[41] *See* UNCLOS, *Supra* note 1, art. 292, para 3.

[42] *See* Judge Rüdiger Wolfrum, President, Int'l Tribunal for the Law of the Sea, Statement to the Sixth Committee of the General Assembly of the United Nations, 2 (Oct. 20, 2006).

the prompt release of the oil tanker M/V Saiga and its crew from detention in Conakry, Guinea, the applicant State, inter alia, accusing Guinea of piracy. Guinea had claimed that the Saiga was engaged in smuggling activities off its coast when arrested.[43] The arrest at a point outside Guinean waters was claimed to be in the exercise of the right of hot pursuit. Guinea also maintained that the Tribunal had no jurisdiction in the matter and that the claim by Saint Vincent and the Grenadines was inadmissible. After a procedure of only three weeks, the Tribunal on December 4, 1997 delivered its judgment and ordered the prompt release of the vessel.

The subsequent cases in this regard, namely, the "Camouco" Case, the "Monte Confurco" Case, the "Grand Prince" Case, the "Chaisiri Reefer 2" Case, the "Volga" Case, the "Juno Trader" Case, the "Hoshinmaru" Case and the "Tomimaru" Case were duly decided with the aid of the treaty law and customary international law. In respect of the six cases in which the Tribunal ordered the release of the vessel and/or its crew upon the posting of a reasonable bond, it can fairly be said that it has developed a coherent jurisprudence, particularly as regards the relevant factors for determining the reasonableness of bonds or other financial security.

C. Cases Relating to the Merits

The parties may also submit a particular dispute to the Tribunal at any time by means of a special agreement, which, to date, has been done on two occasions. In the M/V Saiga (No. 2) Case[44], Saint Vincent and the Grenadines and Guinea agreed to submit to the Tribunal the merits of the dispute relating to the arrest and detention of the vessel M/V Saiga, the only case which the Tribunal has so far decided on the merits. The other case is based on a special agreement and concerns the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean, a dispute between Chile and the European Community.[45]

[43] M/V "Saiga" Case (Saint Vincent and the Grenadines v. Guinea) (Prompt Release), Judgment of December 4, 1997, 1 Int'l Trib. L. of the Sea Rep. of Judgments Advisory Opinons and Orders, 16-38 (1997), <available at http://www.itlos.org/start2_en.html> (Last visited January 10, 2010)

[44] *See* Press Release, International Tribunal for the Law of the Sea, Summary of opinions appended to the Judgment of July 1, 1999 (July 1, 1999) (on file with author).

[45] Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile v. European Community), Order of 29 December 2005, ITLOS Reports 2005-2007, p.4

CONCLUSION

In its thirteen years of existence the International Tribunal for the Law of the Sea has established a reputation for the expeditious and efficient management of cases, and has already made a substantial contribution to the development of international law. According to the United Nations Convention on the Law of the Sea it has the competence and means to deal with a wide range of disputes, and is well equipped to discharge its functions speedily, efficiently and cost-effectively. The total of eighteen cases, of which twelve were fisheries related and thirteen were introduced on the basis of the Tribunal's compulsory jurisdiction, may not appear impressive.

However, the Tribunal's most recent decisions arguably demonstrate an emerging willingness to carve out a more useful role within its existing institutional constraints. It is not yet clear that the creation of the Tribunal was a "great mistake,"[46] and commentators remain cautiously optimistic that it may yet be capable of relevant and robust contributions to interpretation of the Convention and to the law of the sea. Ultimately, however, increased resort to the Tribunal may be something over which it will have little control.

[46] Shigeru Oda, 'Dispute Settlement Prospects in the Law of the Sea', (1995) 44 INT'L & COMP. L.Q. 863, 864.