

**ITLOS and Dispute Settlement Mechanisms of the
United Nations Convention on the Law of the Sea**

**by
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Germany, March-December 2005**

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1. Settlement Procedure

To settle sea disputes, the Convention on Law of the Sea provides freedom to the States Parties concerned to settle their dispute through negotiation or other diplomatic measures between them at anytime. Parties could, in case there is no settlement between them, request to the court or Tribunal having jurisdiction over their issues.

According to the article 287 of the United Nations Convention, one state has the right to choose one or more of following means for settlement their disputes concerning the interpretation and application of this Convention:

- The International Tribunal for the Law of the Sea -ITLOS
- The International Court of Justice -ICJ
- An Arbitral Tribunal constituted in accordance with Annex VII
- A Special Arbitral Tribunal constituted in accordance with Annex VIII.

As of December 2005, forty-one states have made a declaration concerning their choice of procedures¹. Twenty-six states have indicated the International Tribunal for Law of the Sea as their means for settlement of disputes. An equal number have expressed their preference for the International Court of Justice. Three of forty-one states have expressed rejection ICJ as their mean for settlement of disputes. Even though the States Parties are free to choose their procedures, the International Tribunal for Law of the Sea, which is the new institution, has been chosen as a means for settlement of sea disputes. However, where the parties have not accepted the same procedure or have not made declaration, for example one for ITLOS and the other for ICJ, or have not made declaration, the arbitration shall be applied to their disputes.

In practice as indicated in the list in appendix 46, states parties have included in their declarations:

- 1- A choice of procedure made in two ways: First, the states can choose one, more procedures, or all procedures with or without order or preference. Second, a particular procedure is defined in relation to the specific issue such as fisheries, protection and preservation of the marine environment, marine scientific research or navigation including pollution from vessels and by dumping.

¹ See the table of states' choice of procedure in appendix 46.

- 2- Indicating that they wish to exclude issues referred to in Article 297 (2) and (3) from the application of section 2 binding procedures;
- 3- Indicating that they wish to exclude issues referred to in Article 298 from the application of section 2 binding procedures; and
- 4- A choice of procedure to deal with disputes over the prompt release of detained vessels and crews under Article 292.
- 5- Indicating that they reject jurisdiction of one or more of the four means for any types of disputes.

With regard to the choice of procedure the article 287 of the Convention also provides that a state party which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII, and if the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submit only to the arbitration in accordance with Annex VII, unless the parties otherwise agree.

I. The International Tribunal for the Law of the Sea (ITLOS)

The establishment of the International Tribunal for Law of the Sea is to bring the system of dispute settlement of the United Nations Convention on Law of the Sea into full operation. It is the latest international judicial institutions which was established after the entry into force of the United Nations Convention on Law of the Sea in November 1994. It convened its first session at its seat in Hamburg on 1 October 1996 and began its work from thereon. For a period of one year of its organizational phase, it has adopted three documents: the Rules of Tribunal, the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal, and the Resolution on the Internal Judicial Practice of Cases before the Tribunal². The Tribunal has decided 13 cases so far. Of these cases, seven cases related to prompt release proceedings, four cases related to provisional measures, and one case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South Eastern Pacific Ocean between Chile and European Community, and the other one is the M/V "SAIGA" case between Saint Vincent, the Grenadines and Guinea³.

In accordance with article 15 of the Statute, the Tribunal may form special chambers. The Tribunal forms annually a Chamber of Summary Procedure. In prompt release cases under article 292 of the Convention, it would be more appropriate in time to come if such cases were referred to the Chamber of Summary

² Gudmundure Eiriksson, ITLOS, p 2.

³ Report of ITLOS.

Procedure. The Tribunal has formed two other Chambers, one to deal with fisheries disputes and the other with marine environment dispute⁴. In 2000, for example, at the request of Chile and the European Community, the Tribunal formed a special chamber to deal with a dispute concerning the conservation and sustainable exploitation of swordfish stocks in the Southeastern Pacific Ocean. This is a unique case between an international organization and a State that has been attracted by the contentious jurisdiction of a world court⁵.

Under Part XV of the UNCLOS, the Tribunal has jurisdiction over certain types of legal disputes between states parties concerning the interpretation and application of law of the sea convention or international agreement related to the purpose of the Convention. Unless parties agree otherwise, the Tribunal's jurisdiction becomes obligatory in respect of prompt release of vessels under article 292 and provisional measures under article 290, paragraph 5, of the Convention. The Seabed Disputes Chamber of the Tribunal enjoys almost exclusive jurisdiction in relation to activities in the international seabed area⁶. It has competence *ratione materiae* which goes further and comprises contracts or plans of works, acts of omission, refusal of contracts, legal issues arising in the negotiation of the contract, and disputes where it is alleged that liability has been incurred, in order to name only subject matters expressly mentioned in Article 187 of the convention.

A. The members of the Tribunal (Judges)

The Tribunal is composed of 21 independent members elected by the States Parties to the Convention⁷. In accordance with Annex VI, article 4 (3) the election of judges shall take place within 6 months of the entry into force of the UN Convention that means by 16 May 1995, but the meeting of State Parties to the UN Convention on 22 November 1994 decided to postpone the first election of judges to 1 August 1996⁸. The judges are elected for a term of 9 years but in order to ensure the triennial election in the future, seven elected judges were to serve for a nine-year term, seven for a term of six years, and seven for a term of three years⁹.

The term of office of the members elected at the first election commenced on 1 October 1996. Seven members have expired on 30 September 2005, seven expired on 30 September

⁴ Ibid.

⁵ Ibid, page 5.

⁶ P. Chandrasekhara Rao, President of ITLOS, Current Marine Environmental Issues and ITLOS, page 4.

⁷ Statute of ITLOS, article 2.

⁸ Report of the meeting of the state parties, on 21-22 November 1994.

⁹ Statute, article 5

2002, and seven expired on 30 September 1999. As provided in article 5 of the Statute, those whose term expired may be reelected. In practice, at the triennial election, six of the seven judges whose term expired on 30 September 1999 were reelected for their term of nine years. Four of those whose term of office expired on 30 September 2002, were also reelected for their term until 2011. The fifteenth Meeting of the States Parties to the Convention on 22 June 2005 elected five new judges and two whose term expired on 30 September 2005 were reelected to serve term nine years. Before taking up their duties, newly elected judges are required to make the solemn declaration to exercise the powers as judges impartially and conscientiously.

In accordance with the article 2 of the Statute, the judges of the Tribunal are elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea. The same article provides that the election of judge assures the representation of the principal legal systems of the world, and equitable geographical contribution. The article 3 (2) of the Statute provides that there shall be no fewer than three members from each geographical group as established by the General Assembly of the United Nations. These groups are: African Group, Asian Group, Latin American and Caribbean Group; Western European and other states Group; and the Eastern European Group. Thus, under this provision, and as determined by the Meeting of State Parties at its fifth meeting on 31 July 1996, 21 members of the Tribunal have been elected as follows¹⁰:

- (a) Five judges from African group;
- (b) Five judges from the Asian group;
- (c) Four judges from the Latin American and Caribbean group;
- (d) Four judges from the Western European and other States group;
- (e) Three judges from the Eastern European group.

The first meeting of the States Parties also decided on geographical distribution of the term of nine years, six years, and three years so that the members of each category were to be the nationals of African; Asian, Latin American and Caribbean; Eastern European; and Western European Group.

The current composition of the Tribunal is as follows:

¹⁰ Meeting of State Parties, 21 April 1999

<u>Name</u>	<u>Country</u>	<u>Term Expiry</u>
Rüdiger Wolfrum (President)	Germany	30 September 2008
Joseph Akl(Vice President)	Lebanon	30 September 2008
Hugo Caminos	Argentina	30 September 2011
Vicente Marotta Rangel	Brazil	30 September 2008
Alexander Yankos	Bulgaria	30 September 2011
Anatoly Lazarevich Kolodkin	Russia	30 September 2008
Choo-Ho Park	Korea	30 September 2014
Paul Bamela Engo	Cameroon	30 September 2008
L. Dolliver M. Nelson	Grenada	30 September 2014
P. Chandrasekhara Rao	India	30 September 2008
Tullio Treves	Italy	30 September 2011
Tafsir Malick Ndiaye	Senegal	30 September 2011
Jose Luis Jesus	Cape Verde	30 September 2008
Guangjian Xu	China	30 September 2011
Jean-Pierre Cot	France	30 September 2011
Anthony Amos Lucky	Trinidad &Tobago	30 September 2011
Stanislaw Pawlak	Poland	30 September 2014
Shunji Yanai	Japan	30 September 2014
Helmut Türk	Austria	30 September 2014
James Kateka	Tanzania	30 September 2014
Albert Hoffmann	South Africa	30 September 2014

B. Presidency

The President and Vice President of the Tribunal are elected by secret ballot by a majority of the member of the Tribunal from among the 21 elected judges¹¹. They serve for a period of three years and may be re-elected¹². The terms of office of the President and Vice President of the Tribunal begin to run from the date on which the terms of office of the members elected at a regular election begins¹³. The outgoing president continues to exercise the functions of the President of the Tribunal until the election of the next President has taken place if he is still a member of the Tribunal at the date of the election¹⁴.

The President of the Tribunal presides at all meetings of the tribunal. He directs the work and supervises the administration of the Tribunal (article 12 of the Rules). He represents the Tribunal in its relation with States and other entities. In event of an equality of votes, the President has a casting vote¹⁵. The President is an ex officio member of the Chamber of Summary Procedure and he presides over any special chamber of which he is a member.

¹¹ Rules of the Tribunal, Article 11.

¹² Ibid, Article 12

¹³ Ibid, Article 10

¹⁴ Ibid, Article 10

¹⁵ Ibid, Article 12

The Vice Presidents exercises the functions of the presidency in the event of a vacancy in the presidency or of the inability of the President of the Tribunal¹⁶. The Vice President is an ex officio member of the Chamber of Summary Procedure¹⁷. He also acts instead of the President as a member of ex officio of the Drafting Committee unless the President does not share the majority opinion of the majority as it appears then exist¹⁸. In the event of the inability of the President and Vice-President, the Senior Member of the Tribunal, who takes precedence next after the President and Vice-President, shall exercise the function of the Tribunal¹⁹.

C. Chambers of the Tribunal

1. Seabed Disputes Chamber

(a) Members

The Seabed Disputes Chamber is established as an expert body of the International Tribunal for Law of the Sea, which has a vital role to settle disputes concerning activities in the deep seabed mining. The judges who serve in the Chamber are selected among those of the Tribunal.

According to Annex VI, section 4, a Seabed Disputes Chambers shall be established. It is consists of 11 members selected by a majority of the member of the Tribunal from among them for a term of three years and could be renewable for the second term²⁰. The member of the Chambers shall represent the principal legal system of the world and assure the equitable geographical distribution²¹. One President shall be selected from the member of the Chambers to serve the term of the Chambers. If any proceedings is still pending during the term of three years, the Chambers shall complete the proceedings in its original composition²². If there is a vacancy, the Tribunal shall select one among its members to hold office for the remainder of predecessor's term²³. In order to assure the representation, the Tribunal adopted the proposal of the first election of the members as follows:

- three judges are nationals of the African Group;
- three judges are nationals of Asian Group;
- two judges are nationals of Latin American and Caribbean Group;
- two judges are nationals of Western European and other states group; and

¹⁶ Ibid, Article 13

¹⁷ Ibid, Article 28

¹⁸ Resolution of the Tribunal, article 6.

¹⁹ Rules, Article 4

²⁰ Annex VI, Article 35, para 3.

²¹ Ibid, Article 35, para. 2

²² Ibid, Article 35, para. 5

²³ Ibid

- one judge is a national of state member of Eastern European Group.

For the next elections, the Tribunal decided that for every two terms last for six years, one judge national of the Eastern European Group would occupied another seat during one term, and this seat would be alternatively deducted from the seat allotted to the judge nationals of States of the African Group and those allotted to the judges nationals of the States of Asian Group²⁴.

The Chamber has its President who is selected among its members (article 35). However, the article 35 of the statute provides that in case the vacancy, the Tribunal is to select a successor from among its elected members, who will hold office for the remainder of his predecessor's term.

The parties to the dispute may request the Seabed Disputes Chamber to establish an *Ad Hoc* Chamber to have jurisdiction over their dispute (article 188 of the convention). *Ad Hoc* Chamber is composed of three members of the Seabed Disputes Chamber. The composition of the *Ad Hoc* Chamber is determined by the Seabed Disputes Chamber with the approval of the parties to the dispute. Members of the *Ad Hoc* Chamber must not be in the service of, or nationals of, any parties to the dispute (article 36 (3) of the Statute). However, article 39 paragraph 2 provides that if the parties do not agree on the composition of an *Ad hoc* Chamber, each party to the dispute shall appoint one member, and the third member shall be appointed by their agreement. If they disagree, or if any party fails to make an appointment, the President of the Seabed Dispute Chamber shall promptly make an appointment or appointments from among its members, after consultation with the parties.

The current composition of the Seabed Dispute Chamber for the period ending 30 September 2008 is as follows:

²⁴ P. Chandrasekhara Rao and Rahmantullah Khan, ITLOS, page 79

Name	Title	Country
Hugo Caminos	President	Argentina
Anatoly Lazarevich Kolodkin	Member	Russia
Tullio Treves	-	Italy
Jose Luis Jesus	-	Cape Verde
Anthony Amos Lucky	-	Trinidad & Tobago
Stanislaw Pawlak	-	Poland
Shunji Yanai	-	Japan
Helmut Türk	-	Austria
James Kateka	-	Tanzania
Albert Hoffmann	-	South Africa

(b) Jurisdiction

The Seabed Disputes Chamber has jurisdiction over disputes with respect to activities in the Area, as defined in article 1 of the convention, falling within the categories referred to in article 187 of the convention. Parties to such disputes may be States Parties, the International seabed Authority, the Enterprise, state enterprise and natural or juridical persons in accordance with the agreement.

2. Special Chambers

The Statute envisages the establishment by the International Tribunal for the Law of the Sea of three kinds of special chambers for dealing with the particular categories of disputes. The judgment of any chamber as well as the Seabed Dispute Chamber shall be considered as rendered by the Tribunal

- the Chamber of Summary Procedure;
- standing chambers to deal with particular categories of disputes;
- chambers to deal with particular disputes at the request of the parties, so called *ad hoc* chambers.

(a) Chamber of Summary Procedure

In accordance with the article 15 of the statute, with a view to the speedy dispatch of business, the Tribunal is required to form annually a chamber of five members, with two alternative members, to hear and determine disputes by summary procedure. In addition, the Chamber may prescribe provisional measures if the Tribunal is not in session or a sufficient number of members is not available to constitute a quorum²⁵.

The President and Vice President of the Tribunal act as members *ex officio* of the Chamber of Summary Procedure and he or she shall preside over that chamber²⁶. Three other members

²⁵ Statute, article 25.

²⁶ Rules, article 28.

are elected by secret ballot with a majority of the member of the Tribunal. In addition, in order to assure the availability of the chambers to sit in a given case, two members of the Tribunal shall elect annually for substitution.

The current composition of member of the Chamber for Summary Procedure is as follows:

Name	Title	Country
Rüdiger Wolfrum	President	Germany
Joseph Akl	Members	Lebanon
Alexander Yankov	-	Bulgaria
L. Dolliver M. Nelson	-	Granada
Tafsir Malick Ndiaye	-	Senegal
Tullio Treves	Alternates	Italy
Shunji Yanai	-	Japan

(b) Standing Chambers to deal with particular categories of disputes

This Chamber is envisaged by article 15 (1) of the Statute that reads, "The Tribunal may form such chambers, composed of three or more of its elected members, as it considers necessary for dealing with particular categories of disputes". The article 29 of the Rules also set out the procedure of the establishment of this chamber. The Tribunal is to determine the category of disputes concerned, the number of members, the period for which they will serve, the date when they enter upon their duties and the quorum for meeting.

The Standing Chamber is not mandatory. The Tribunal could dissolve it at any time, but the Chamber must finish the case pending before it²⁷. In case any member expires his or her term of office before the case is closed, the Tribunal select new members to replace them.

For the purpose of dealing with particular cases as provided in article 15 of the Statute, the Tribunal, by Resolution of 1997, established two standing special chambers, the Chamber for Fisheries Disputes and the Chamber for Marine Environment Dispute. Each Chamber consists of seven members. If the number of members able to sit in a given case falls below five, the Tribunal shall select new members to bring the number to five at least.

The **Chamber for Fisheries Disputes** is available to deal with dispute concerning the interpretation or application of:

(1)any provision of the Convention concerning the

²⁷ Ibid, article 29.

conservation and management of marine living resources; and

- (2) any provision of any other agreement relating to the conservation and management of marine living resources which confers jurisdiction on the Tribunal.

The current composition of the Chamber for Fisheries Dispute which term ending 30 September 2008 is as follows:

Name	Title	Country
Anthony Amos Lucky	President	Trinidad & Tobago
Alexander Yankov	-	Bulgaria
Choon-Ho Park	-	Republic of Korea
Guangjian Xu	-	China
Helmut Türk		Austria
James Kateka		Tanzania
Albert Hoffmann		South Africa

The **Chamber for marine Environment Disputes** is available to deal with disputes concerning the interpretation or application of:

- (1) any provision of the Convention concerning the protection and preservation of the marine environment;
- (2) any provision of special conservations and agreements relating to the protection and preservation of the marine environment referred to in article 237 of the Convention; and
- (3) any provision of any agreement relating to the protection and preservation of the marine environment which confers jurisdiction on the Tribunal.

The current composition of the Chamber for Marine Environment Dispute for the period ending 30 September 2008 is as follows:

Name	Title	Country
Tullio Treves	President	Italy
Vincent Marotta Rangel	Member	Brazil
P. Chandrasekhara Rao	-	India
Jose Luis Jesus	-	Cape Verde
Stanislaw Pawlak	-	Poland
Shunji Yanai	-	Japan
James Kateka	-	Tanzania

(c) Chamber for dealing with particular disputes at the request of the parties

Article 15 (2) of the Statute provides for the establishment, at the request of the parties concerned, of a chamber for

dealing with particular disputes. The Tribunal with an approval of the parties determines the members who are constitute the chamber. A request to form a chamber must be made within two months after the institution of proceedings. If the request to form a chamber is made by one party only and not by the parties jointly, the President ascertains whether the other party assents²⁸. Upon agreement of the parties to form the chamber, the President ascertains the views of the parties on its composition and reports to the Tribunal accordingly²⁹.

D. Committee of the Tribunal

With a view to ensure the day-to-day work, the Tribunal has established five Committees that are dealing with their specific function. Each Committee has one Chairman. Those committees are:

- (1). Committee on Rules and Judicial Practice
- (2). Committee on Budget and Finance
- (3). Committee on Staff and Administration
- (4). Committee on Library and Publication
- (5). Committee on Building and Electronic Systems

E. Experts

The article 289 of the Convention provides that any dispute involving scientific or technical matters, the Tribunal may, at a request of a party or *proprio motu*, select no fewer than two scientific or technical experts. The selection is made in consultation with the parties. The selected experts sit with the Tribunal but without the rights to vote. They take part in the judicial deliberations of the Tribunal³⁰. The experts shall be independent and enjoy the highest reputation for fairness, competence and integrity and they are required to make solemn declaration at a public sitting for their job³¹. Every expert will make the solemn declaration before the making any statement³².

F. Registry

The Registry is an administrative organ of the Tribunal. The Registry consists of the Registrar, the Deputy Registrar and staff serving in 35 other established posts. In accordance with the article 32 of the Rules, the Tribunal elects its Registrar and a Deputy Registrar from among candidates nominated by Member States for a term of seven years and may be reelected. In accordance with the Rules, the Tribunal may elect an Assistant Registrar but practical situation the Tribunal has not done so. The Deputy Registrar assists Registrar, acts as Registrar in his or her absence and, in the

²⁸ Ibid, article 30 (1).

²⁹ Ibid, article 30 (2).

³⁰ Rules, article 42

³¹ Ibid, article 15

³² Rules, article 79

event of the office becoming vacant³³.

With assistance of the Deputy Registrar, the Registrar is responsible for all registry's legal works, both substantive and procedural, for all administrative arrangements and support, for the assessment and collection of contributions, and for the administration of the accounts and finances of the Tribunal. The Registrar shall be present in person at the meeting of the Tribunal, and of the Chambers and sign all judgments, advisory opinions and orders of the Tribunal. He or she is a regular channel of communications to and from the Tribunal. He keep a list of cases and keeps copies of communications and agreements, as required by the Rules³⁴.

G. Judges Ad hoc

In accordance with the article 17 of the Statute, the parties to the dispute have the rights to choose judge to sit on the bench for the purpose of the case, in addition to, and sometimes in place of, the elected judges. If the Tribunal, when hearing a dispute, does not include upon the bench a member of the nationality of the parties, each of those parties may choose a person to participate as a member of the Tribunal³⁵. Such judges are known as judges *ad hoc*. The person chosen as judges *ad hoc* shall fulfill the same conditions pertaining to the qualifications for election to the Tribunal and the participation in a particular case. According to article 19 of the Rules, the judge *ad hoc* may be of a nationality other than that of the party which chooses him. If the Tribunal find that two or more parties of the parties to the dispute have the same interests, the Tribunal shall fix the time limit within which they may jointly choose one judge *ad hoc*³⁶. In the case of *Southern Bluefin Tuna Case between Japan, New Zealand and Australia*, for example, New Zealand and Australia jointly chose a judge *ad hoc*³⁷.

J. Jurisdiction of the Tribunal

If we look the area in which the Tribunal is dealing with is unlikely complicated comparing to the other International Institutions such as International Court of Justice that is responsible for many different kinds of subject matters. However, the ocean affairs and law of the seas cover variety of activities and obligations of the states around the world. So the International Tribunal for Law of the Sea which is the international institution established for the purpose of settlement of sea disputes and of assuring the non abuse by the state parties plays an important role to maintain the world in peace at sea.

³³ Ibid, article 37

³⁴ Ibid, article 36

³⁵ Statute, article 17 (3).

³⁶ Rules, article 20.

³⁷ Gudmundur Eiriksson, ITLOS, page 47.

The Jurisdiction refers to the competence or power of the Tribunal to decide the cases. The jurisdiction of the international tribunal for law of the sea is based on the United Nations Convention on Law of the Sea and on any international agreement related to the purposes of the Convention. It also depends on the agreement of the parties to the dispute and on the effect of the their declaration of choosing mean for settlement of disputes made when signing, ratifying or acceding to the Convention or at any time thereafter³⁸. It demands that both parties to the disputes had accepted the Tribunal to have jurisdiction on their case and agreed to bring the case before the Tribunal. In accordance with the Convention on Law of the Sea, the Tribunal shall be open to state parties³⁹. The definition of the term " State Parties" in the Convention refers to not only States which have consented to be bound by the Convention but also entities other than states, such as Namibia represented by the United Nations Council for Namibia, self-governing associated States, all territories which enjoy full internal self-government, and international organizations⁴⁰.

When one of the four means has been chosen as a mechanism, any dispute concerning the interpretation or application of the Convention may be submitted to it at any request of any party⁴¹. However, the Convention contains article on the limitation to applicability of section 2 on compulsory procedures entailing binding decisions, in which the first paragraph indicates the disputes concerning the exercises of coastal state's sovereign rights or jurisdiction that contravene of this Convention in regard to the rights in exclusive economic zone; of laws and regulations adopted by coastal state in conformity with international laws; of specified international rules and standards for the protection and preservation of the marine environment, may be submitted to compulsory jurisdiction. The second and third paragraph provide that disputes relating to the interpretation or application of the provision of the Convention with regarding the marine, scientific research and fisheries may be submitted to compulsory jurisdiction, and continue by stating some exceptions⁴²: (1) regarding the scientific research, coastal state shall not be obliged to accept the submission to compulsory settlement of disputes concerning the exercise a right or discretion under article 246 or 253; (2) As regard fisheries, the coastal shall not be obliged to accept the submission to such settlement of disputes relating to the coastal state's sovereign rights with respect to the living

³⁸ UNCLOS, article 287 (1).

³⁹ Statute, article 20.

⁴⁰ UNCLOS, article 1 and article 305.

⁴¹ Ibid, article 288.

⁴² UNCLOS, article 297.

resources in exclusive economic zone, including explicitly some important aspects of such exercise.

Furthermore, the Convention stated the optional exception in which specific cases are required to choose by State Parties. This means that the court or Tribunal that are chosen by one state does not have jurisdiction over all cases of that state. The States have the right to choose which court or tribunal to have jurisdiction over which one of their cases as specified in article 298 of the Convention⁴³.

K. Procedural Aspect of the Tribunal

The Rules of the International Tribunal for Law of the Sea was adopted on 28 October 1997 in which there are articles on legal proceeding of the Tribunal. This Rules was established under Annex VI of the Convention that powers the Tribunal to adopt rules of procedure for carrying out its functions⁴⁴. Under the Rules, the Tribunal has to proceed the cases brought by parties concerned through the procedural phases, starting from instituting of application or notification indicating the party making it and the party against and the subject of the dispute; filing of pleadings which consists of a memorial, a counter-memorial and provision of agreement; making initial deliberation; oral proceeding; and issuing a judgment. For urgent proceeding which was stipulated in article 290 of the Convention and article 89 of the Rules of the Tribunal, a party may request the Tribunal for the prescription of provisional measure to prevent serious harm caused by the conflicting activities in the course of proceedings⁴⁵. This section will look more detail of each phase of proceedings.

(i) Institution of Proceeding

The proceeding before the Tribunal can be instituted either by written application or by notification of a special agreement. Where a case is brought by one of the parties, it is done by an application. Where the case is brought under the agreement between the parties, it is done by a notification. The case, which is brought before the Tribunal by application, indicates the party which bring the claim and the party against which the claim is brought and the subject of the dispute. The application also specifies the legal ground upon which the jurisdiction of the Tribunal is said to be based, the precise nature of claim with the fact and the grounds on which the claim is based⁴⁶. In case it is brought by notification, it is accompanied by an original or certified copy of the special

⁴³ See the list of procedure chose by States in Appendix 1

⁴⁴ Statute, article 16.

⁴⁵ In the case between Malaysia and Singapore concerning land reclamation in and around the Strait of Johor, Malaysia brought the case before the Tribunal by a notification. Pending the constitution of arbitral tribunal, Malaysia has requested the Tribunal for prescription of provisional measures as stated in article 89 of the Rules of the Tribunal and article 290 of the Convention on Law of the Sea.

⁴⁶ Rules, article 54.

agreement. Equally, the notification indicates the precise subject of the dispute and identifies the parties to the dispute⁴⁷. The application and notification are required to state the name of its agents with an address so that the communication can be reached. Upon receiving an application, the Registrar lists the case and forthwith transmits a certified copy of the application to respondent and of the notification to any party in case it is not effected jointly by the parties. The Registrar shall also keep informed all States Parties⁴⁸ and the United Nations⁴⁹. The respondent or any party to the special agreement, upon receiving the certified copy of such application or notification, or as soon as possible, shall inform the Tribunal of the name of its agent⁵⁰.

In a case where the applicant proposes to found the jurisdiction of the Tribunal upon the party against which the application is made has not given its consent, the application is transmitted to that party. The Registrar will not put the application in the list of the case, nor will any action be taken in the proceedings, unless and until the party against which such application or notification is made consents to the jurisdiction of the Tribunal for the purpose of the case⁵¹.

(ii) Written Proceedings

In accordance with the article 45 of the Rules, every case submitted to the Tribunal, the President shall ascertain the views of the parties with regard to questions of procedure. In the light of this, the Tribunal determines the time limit used for and the number and order of pleadings. In some cases, when there are preliminary objections and requests to intervene by third parties in the proceeding, the decision on the organization of proceeding is required to be postponed⁵². The pleading which begun by mean of application consists of a memorial made by the applicant in which contains a statement of the relevant facts; a statement of law; and the submission, and a counter memorial made by the respondent in which contains an admission or denial of the facts stated in the memorial; any additional facts; observation concerning to the statement of law in the memorial; a statement of law in answer thereto; and the submissions⁵³. In case instituted by the notification of a special agreement, the provisions of the agreement shall govern the number and order of the pleading. If the agreement contains no such provision, and if the parties have not agreed on the number and order of pleadings, the memorial and counter memorial are also required to made

⁴⁷ Ibid, article 55

⁴⁸ Statute, article 24

⁴⁹ Agreement between ITLOS and UN, article 4

⁵⁰ Rules, article 56.

⁵¹ Ibid, article 54.

⁵² Gudmundur Eiriksson, ITLOS

⁵³ Rules, article 62

within the same time limits⁵⁴.

In the main proceeding before the Tribunal there would be a second round of written proceeding. The second round of proceedings consists of the exchange of reply and a rejoinder. At this stage the parties do not repeat their contentions in memorial or counter memorial but they try to bring out the issues which still divide them⁵⁵.

(iii) Initial Deliberation after Written Proceeding

The initial deliberation is the job of the Tribunal to consider the case in a period between written proceeding and oral proceeding. For a period of five weeks after the closure of written proceeding, each judge prepares a brief written note identifying the principal issues for decision and point which should be clarified during oral proceedings without further elaboration⁵⁶. Then, on the basis of written proceeding and the judges' notes the President draws up a working paper which will be circulated by the Registrar to the judges not later than 8 weeks after written proceeding so that the judges could exchange views or consider the scope, nature or any requirement in the case⁵⁷. Article 68 of the Rules provides that after the closure of the written proceedings and prior to the opening of the oral proceedings, the Tribunal shall meet in private to enable judges to exchange views concerning the written pleadings and the conduct of the case.

(iv) Oral Proceeding

The oral proceeding is the hearing stage of the case at the Tribunal. After the closure of the written proceedings the Tribunal shall set the date for oral proceedings. Such date shall fall within 6 months after the closure of the written proceeding⁵⁸. The hearing of the case is conducted in public, unless the Tribunal decides otherwise or unless the parties demand that the public not be admitted⁵⁹. The President of the Tribunal shall have control of the hearing. In the event that the President is unable to preside, the Vice President or senior judge present at the Tribunal shall preside. The parties to the dispute have to be present during the hearing but when one of the parties does not appear before the Tribunal or fail to defend its case, the other party may request the Tribunal to continue the proceedings and make its decision⁶⁰.

During the oral proceedings, the Tribunal indicates to the

⁵⁴ Ibid, article 61.

⁵⁵ Ibid, article 62

⁵⁶ Article 2 of the Resolution on the on the Internal Judicial Practice of the Tribunal.

⁵⁷ Resolution on the International Judicial Practice of the Tribunal, article 2 and 3.

⁵⁸ Rules, article 69

⁵⁹ Ibid, article 74

⁶⁰ Statute, article 28.

parties any points or issues they wish to have addressed or not addressed, questions, call the parties to provide evidence or explanations, seeks information itself, calls witnesses on its own initiative and arranges for inquiries or expert opinions. At the conclusion of the last statement made by a party at the hearing, its agent, without recapitulation of the arguments, shall read that party's final submissions⁶¹. The Registrar makes a verbatim record of every hearing in one of the official language of the Tribunal, which will be preceded by the names of the judges present, and those of the agents, counsels and advocates of the parties. Copies of the transcript of the verbatim will be circulated to the judges sitting in the case and to the parties. The judges may correct the transcript of any thing they have said and the parties, under supervision of the Tribunal may correct of speeches or statement made on their behalf. The witnesses and experts may also correct in the same manner. One certified copy of the corrected transcript, signed by the President and the Registrar, constitutes the authentic minutes of the hearing.

(v) Judgment

After the closure of oral proceeding the judges have four working days to study the arguments presented to the Tribunal in the case. During this period every judges prepares his tentative opinion on the issue in the form of briefing note. The Tribunal makes an initial deliberation in order to seek a conclusion on what are the issues of case which need to be decided. During this period, the Tribunal also sets up a drafting committee for the case, consist of five judges chosen on the proposal of the President by an absolute majority of the judge present⁶². After its establishment, the Drafting Committee meets immediately to prepare a first draft of judgment which normally takes three weeks for its consideration and inclusion in the draft⁶³. In accordance with article 10 of Resolution on the Internal Judicial Practice of the Tribunal, experts who are appointed under article 289 of the Convention may participate in the deliberation process. The first draft of the judgment will be circulated to the judges in the case for amendments or comments which need to be returned to the Committee within three weeks from the date of the circulation⁶⁴. When receiving the second draft of the judgment, the Registrar will circulate copies to all judges.

The deliberations of the second draft of the judgment are held as soon as possible after receiving it. In principle, it is not later than three months after oral proceeding. The Tribunal examines the second draft in first and second reading in which judges are allowed to modify or make new amendments.

⁶¹ Rules, article 75.

⁶² Resolution, article 6

⁶³ Ibid, article 7

⁶⁴ Ibid, article 7.

Separated or dissenting opinions will be submitted within a time-limit fixed by the Tribunal⁶⁵. After the Tribunal has completed its second reading of the draft of the judgment, the President takes the vote in order to adopt a judgment. In accordance with article 29 of the Statute, all questions shall be decided by a majority of the member of the Tribunal who are present. In the event of an equality of votes, the President or the member of the Tribunal who acts in his place have a casting vote. The judgment states the reasons on which it is based, contains the names of the members of the Tribunal have taken part and will be signed by the President and the Registrar⁶⁶. It shall be read in open court, and due notice having been given to the parties to the dispute.

II. Arbitration

As previous noted, the Arbitration is one of the four means for settlement of disputes concerning the interpretation or application as stated in article 287 of the Convention. The Arbitration under Annex VII is used for the settlement of disputes between parties that have not made a declaration of choosing procedure or for parties that have not accepted the same procedure for settlement of the dispute. A party to the dispute may bring its case before Arbitration by written notification addressed to the other party. The notification shall be accompanied by a statement of the claim and the ground on which it is based⁶⁷.

The Arbitration is composed of five members preferably chosen from the list of arbitrators. A list of arbitrators shall be drawn up and maintained by the Secretary General of the United Nations⁶⁸. Every State Party shall be entitled to nominate four arbitrators to constitute the list⁶⁹. The arbitrators, which the parties have nominated, shall have similar qualification to those nominated for member of the Tribunal⁷⁰. When the case is brought before the Arbitration, the party instituting the proceedings shall appoints one member to be chosen preferably from the list of arbitrators, who may be its national⁷¹. The other party against which the case is made, within 30 days of receipt of the notification addressed by the party that brings the case, also appoints one member among its nationals in the list. The other three members shall be appointed by agreement between the parties and they shall be chosen preferably from the list and shall be nationals of the third States unless the parties otherwise agree. The parties will choose one among the three members as a President. If the party against which the

⁶⁵ Ibid, article 8

⁶⁶ Statute, article 30

⁶⁷ Annex VII, article 1.

⁶⁸ Ibid, article 2

⁶⁹ Ibid, article 2

⁷⁰ Ibid, article 2

⁷¹ Ibid, article 3

case is brought does not do so within that period or the parties are not able to reach an agreement on the appointment, the President of the International Tribunal for Law of the Sea, upon request and in consultation with the parties, shall make the necessary appointment⁷².

In accordance with article 5 of Annex VII of the Convention, the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present the case. All decisions of the arbitral tribunal demand a majority vote of its members. In case there is an equality of vote the President will have a casting vote⁷³. The award mentions the subject matter of the dispute and states the reasons on which it is based, and the name of the members who have participated. The award shall be final and without appeal, unless the parties to the dispute have agreed in advance to an appellate procedure. It will be binding upon the parties.

III. Special Arbitration

A special arbitral tribunal is established under Annex VIII of the Convention. It is also one of the four means for settling dispute concerning the interpretation or application of the articles of the Convention relating to:

- (1) fisheries,
- (2) protection and preservation of the marine environment,
- (3) marine scientific research, or
- (4) navigation, including pollution from vessels and by dumping.

A party to the dispute may submit their case to the special arbitral tribunal by written notification addressed to the other party or parties to the dispute. A statement of the claim and the grounds on which it is based accompanies the notification⁷⁴.

The special arbitral tribunal consists of five members to be preferably chosen from a list of experts. The list of experts shall be established and maintained in respect of each of the field of fisheries, protection and preservation of the marine environment, marine scientific research, and navigation, including pollution from vessels and by dumping⁷⁵. The list of expert shall be drawn up and maintained, in the field of fisheries by the Food and Agriculture Organization of the United Nations, in the field of protection and preservation of the marine environment by the United Nations Environment Programme, in the field of marine scientific research by the Intergovernmental Oceanographic Commission, in the field of

⁷² Ibid, article 3

⁷³ Ibid, article 8

⁷⁴ Annex VIII, article 1

⁷⁵ Ibid, article 2

navigation, including pollution from vessels and by dumping, by the International Maritime Organization⁷⁶. Each state party is entitled to nominate two experts for each field to constitute the appropriate list. They are required to have competence in the legal, scientific or technical aspect of such field, and enjoy the highest reputation for fairness and integrity (annex viii, article 2, paragraph 3).

When the case is submitted to the special arbitral tribunal, the party instituting the proceeding appoints two members, of who one may be its national, from the list of experts relating to the matters in the dispute⁷⁷. The other party against which the case is brought, within 30 days of receipt of notification addressed by the party that submitted the case appoints two members to be chosen preferably from the list relating to the matters in the dispute, one of whom may be its national⁷⁸. The parties to the dispute shall by agreement appoint the President of the special arbitral tribunal, chosen preferably from the appropriate list, who shall be national of the third State⁷⁹. If the parties to the dispute are unable to reach agreement on the appointment of the President, the Secretary General of the United Nations, at a request of a party to the dispute, shall appoint the President⁸⁰. Likewise, If the party against which the case is made has not made appointment of two members to be chosen preferably from the appropriate list or lists relating to the matters in the dispute, the Secretary General of the United Nations, at the request of the party instituting the proceedings, shall make an appointment⁸¹.

The procedures of the special arbitral tribunal to decide the case submitted by the parties to the dispute are not different from those of the arbitral tribunal⁸².

In conclusion, the establishment of United Nations Convention on Law of the Sea and of the International Tribunal for law of the sea clearly shows that the world has established legislative and judiciary power in the field of ocean affairs. At the same time, State Parties that wish to use this new institution, have to make their declaration of choosing the procedures for settling their dispute. It strongly believes that the International Tribunal and other three procedures will play an important role to assure a peaceful maritime boundary and the sustainable development in the sea.

⁷⁶ Ibid, article 2

⁷⁷ Ibid, article 3, para b

⁷⁸ Ibid, article 3, para c

⁷⁹ Ibid, article3, para. d

⁸⁰ Ibid, article 3, para. d

⁸¹ Ibid, article 3, para. c

⁸² Ibid, article 4.

Appendix 1

**List of States Choosing
Means for Settlement Dispute**

State/with date of declaration	Choice of Procedure Declaration under article 287 (numbers indicate the order of preference, if number 1 appears more than one procedure, no order of preference has been specified)				Optional exceptions to applicability of Part XV, section 2, of Convention, under article 298
	International Tribunal for Law of the Sea (ITLOS)	International Court of Justice (ICJ)	Arbitral Tribunal Constituted in Annex VII	Special Arbitral Tribunal Constituted in Annex VIII	Declaration indicating that the state does not accept any one or more of the procedures provided for Part XV, Section 2 with respect to one or more of the categories of disputes
ALGERIA (upon ratification)	Algeria does not consider itself bound by the provisions of article 287, paragraph 1 (b), of the said Convention dealing with the submission of disputes to the ICJ. It declared that, in order to submit a dispute to the ICJ, prior agreement between all the Parties concerned is necessary in each case.				--
ARGENTINA (upon ratification)	1	-	-	2	Disputes specified in article 298, paragraph 1 (a), (b) and (c), of the Convention
AUSTRALIA (22 March 2002)	1	1	-	-	Disputes referred to in article 298, paragraph 1 (a), of the convention
AUSTRIA (upon ratification)	1	3	-	2	--
BELARUS (upon signature)	In respect of the prompt release of detained vessels or their crews	-	1	For disputes relating to fisheries, the protection and preservation of the marine environment, marine scientific research and	Disputes referred to in article 298, paragraph 1(a), (b) and (c) of the Convention.

				navigation , including pollution from vessels and by dumping	
BELGIUM (upon ratification)	1	1	-	-	--
CANADA (upon ratification)	1	-	1	-	Disputes referred to in article 298, paragraph 1(a), (b) and (c) of the Convention.
CAPE VERDE (upon ratification)	1	2	-	-	Disputes referred to in article 298, paragraph 1(b), of the Convention.
CHILE (upon ratification)	1	-	-	2	Disputes referred to in article 298, paragraph 1(a), (b) and (c) of the Convention.
CROATIA (4 November 1999)	1	2	-	-	--
CUBA (upon ratification)	-	Cuba rejected ICJ jurisdiction for any types of disputes	-	-	Consequently, Cuba does not accept the jurisdiction of the ICJ with respect to the provisions of article 297 and 298.
DENMARK (upon ratification)	-	1	Not accepted for any of the categories of disputes mentioned in article 298	-	Does not accept an arbitral tribunal constituted in accordance with Annex VII for any of the categories of disputes mentioned in article 298.
EGYPT (upon ratification)	-	-	1	-	--
Equatorial Guinea (20 February 2002)	No declaration under article 287 made				Disputes referred to in article 298, paragraph 1 (a), of the Convention
ESTONIA (upon accession)	1	1	-	-	--
FINLAND (upon ratification)	1	1	-	-	--

FRANCE (upon ratification)	No declaration under article 287 made				Disputes referred to in article 298, paragraph 1 (a), (b), and (c), of the Convention
GERMANY (upon accession)	1	3	2	-	--
GREECE (upon ratification)	1	-	-	-	--
GUINEA-BISSAU (upon ratification)	-	Guinea Bissau rejected the ICJ jurisdiction for any disputes.	-	-	Consequently, Guinea Bissau does not accept the jurisdiction of ICJ with respect to the articles 297 and 298.
HONDURAS (18 June 2002)	-	1	-	-	--
HUNGARY (upon ratification)	1	2	-	3 For all the categories of disputes specified therein	--
ICELAND (upon ratification)	No declaration under article 287 made				Iceland declared that under article 298 of the Convention the right is reserved that any interpretation of article 83 shall be submitted to conciliation under Annex V, section 2 of the Convention.
ITALY (upon ratification and on 26 Feb 97)	1	1	-	-	Disputes referred to in article 298, paragraph 1 (a), of the Convention
LATVIA (upon accession)	1	1	-	-	--
LITHUANIA (upon accession)	1	1	-	-	--
MEXICO (on 6 Jan 2003)	1	1	-	1	Disputes referred to in article 298, paragraph 1 (a), and (b), of the Convention
NETHERLANDS (upon ratification)	-	1	-	-	--
NICARAGUA					With respect to the categories of disputes referred to

(upon ratification)	-	1	-	-	in article 298, paragraph 1 (a), (b) and (c) of the Convention, Nicaragua accepted only jurisdiction of ICJ
NORWAY (upon ratification)	-	1	-	-	Norway does not accept an arbitral tribunal constituted in accordance with Annex VII for any categories of disputes referred to in article 298.
OMAN (upon ratification)	1	1	-	-	--
PORTUGAL (upon ratification)	1	1	1	1	Disputes referred to in article 298, paragraph 1 (a), (b) and (c), of the Convention
RUSSIA (upon signature and ratification)	In mater relating to the prompt release of detained vessels and crews	-	1	1 For disputes relating to fisheries, the protection and preservation of marine environment marine scientific research and navigation, including pollution from vessels and dumping	Disputes referred to in article 298, paragraph 1 (a), and (b), of the Convention
SLOVENIA (11 October 2001)	-	-	1	-	Slovenia does not accept an arbitral tribunal constituted in accordance with Annex VII for any categories of disputes referred to in article 298.
SPAIN (19 July 2002)	1	1	-	-	Disputes referred to in article 298, paragraph 1 (a), of the Convention.
SWEDEN (upon ratification)	-	1	-	-	--
TUNISIA (upon ratification and on 22 May	1	-	2	-	Disputes referred to in article 298, paragraph 1 (a), (b) and (c) of the Convention.

01)					
UKRAINE (upon ratification)	In respect to the prompt release of detained vessels or their crews	-	1	1 For disputes relating to fisheries, the protection and preservatio n of marine environment marine scientific research and navigation, including pollution from vessels and dumping	Disputes referred to in article 298, paragraph 1 (a) and (b) of the Convention, unless otherwise provided by specific international treaties of Ukraine with relevant States.
UNITED KINGDOM & NORTH IRLAND (12 January 1998 and 7 April 2003)	-	1	-	-	Disputes referred to in article 298, paragraph 1 (b) and (c) of the Convention
TANZANIA (upon ratification)	1	-	-	-	--
URUGUAY (upon ratification)	1	-	-	-	Disputes referred to in article 298, paragraph 1 (b) of the Convention

* Sourced by United Nations Document, LOS Department, as of 09 September 2005.