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Critical Analysis of International Tribunal for the Law of the Sea (ITLOS)

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ABSTRACT

Oceans are vital to the planet's survival. Despite covering more than 70% of the planet and being one of the world's largest food producers, they have found themselves entangled in a tangle of disputes, pollution problems, competition over lucrative fisheries in coastal waters and adjacent seas, and a growing tension between coastal nations over these resources. This study examines ITLOS's jurisdiction and the cases considered by the tribunal. Tensions occurred between attempts by large maritime powers to preserve the status quo on the one hand, and attempts by major maritime powers to maintain the status quo on the other, as coastal governments attempted to defend their economic interests over vast expanses of sea.

Keywords: ITLOS, UNCLOS, Convention.

I. INTRODUCTION

“The historic function of the law of the sea has been long been recognised as that of protecting and balancing the common interest, inclusive and exclusive of all peoples in the use and enjoyment of the oceans while rejecting all egocentric assertions of special interests in contravention of general community interest”.

– as highlighted by MC Dougal and Burke.

The 1982 **United Nations Convention** on the Law of the Sea (UNCLOS or Convention) not only modernised maritime law, but it also established a system of compulsory jurisdiction, which included the establishment of the International Tribunal for the Law of the Sea (hereinafter referred to as the Tribunal). However, some have raised concerns that the ITLOS may result in a patchwork of jurisprudence, despite the existence of the International Court of Justice (hereinafter ICJ), which has substantial experience dealing with law of the sea cases.

ITLOS advocates, on the other hand, argue that the ITLOS has the authority to handle matters involving international organisations, persons, and businesses that the ICJ does not have jurisdiction over. In the view of proponents, the ITLOS is a worthy undertaking since it can provide a rapid and efficient specialised tribunal as well as judges with demonstrated

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experience.

(A) Literature Review

1. ‘International Law of the Sea: An Overlook and Case Study, by Arif Ahmed.’²

The purpose of this study is to provide a brief review of international maritime law, with an emphasis on its origins and legal foundation. This research will also provide light on the civil and criminal responsibilities, jurisdictions, and liabilities of coastal governments in relation to various marine zones. Furthermore, in light of many treaty regulations on international law of the sea, this research defines the extent of utilising these marine zones. In addition, a thorough examination of the facts, problems, judgments, and reasoning in numerous adjudicated cases is provided.

2. Noyes, John E. (1999) “The International Tribunal for the Law of the Sea.”³

The ITLOS and its dispute resolution methods were formed during the Law of the Sea Convention negotiations, according to this article. The ITLOS has a variety of responsibilities, including interpreting treaty provisions, providing legislative guidance to treaty participants, resolving international disputes involving private entities, conducting constitutional reviews of legislative actions, assisting in the negotiation of dispute resolution policies, and promoting debate on highly contentious interstate disputes.

3. “International Tribunal for the Law of the Sea: Its Role in Resolving Sea Disputes by Dr. N. Ramprasad.”⁴

The assertions that the 1982 UN Convention on the Law of the Sea, among many other dispute resolution systems provided by that of the convention, provides a comprehensive system for resolving sea disputes and that ITLOS, a specialised body of institution dealing with sea disputes, provides a comprehensive system for resolving sea disputes are investigated in this paper. As a result, the tribunal is on track to become a highly busy court in the not-too-distant future, with the potential to play a significant role in oceanic governance.

(B) Research Methodology

Doctrinal research approach is applied to this paper. The current study is based on the criminal justice system's application of the narcoanalysis test. The material for this study was gathered

²“International Law of the Sea: An Overlook and Case Study” written by Arif Ahmed, published by Beijing Law Review, Vol.8 No.1, 2017

³“The International Tribunal for the Law of the Sea,” by Noyes, John E. (1999); Cornell International Law Journal: Vol. 32: Iss. 1, Article 3.

⁴International Tribunal for the Law of the Sea: Its Role in Resolving Sea Disputes by Dr. N. Ramprasad; International Journal Of Law Management & Humanities [Issn 2581-5369] Volume 4, Issue 2, 2021.

from a variety of sources, including books on the subject, authoritative publications, articles, essays, law journals, research projects, newspaper reports etc.

(C) Research Objective

- In addition to learning more about the ITLOS.
- To study about the Jurisdiction and the composition of the ITLOS.
- To examine the Sea disputes taken up by the ITLOS.

II. ITLOS: COMPOSITION

“The tribunal was established as one of the dispute-resolution mechanisms by Part XV of the law of the sea convention, which stated that it would be made up of twenty-one independent members with the highest notoriety for fairness and integrity, as well as recognized competence in the field of the law of the sea, whereas the ensuring representation of the world's major legal systems and an equitable geographic dispersion.” Adhoc judges can also be appointed under the Act.⁵

According to Article 17, any other party may appoint a person to serve as a member of the tribunal if the panel includes a member of the nationality of one of the parties to the dispute. If neither party has a judge of the same country in a dispute, they may choose to participate as a member of the tribunal.⁶

The Tribunal may designate no less than two scientific or technical experts to sit with it at the request of a party or on its own initiative, but they will not be entitled to vote. The judges are elected for nine-year periods by the state parties to the convention.

III. ITLOS: HOW TO ACCESS THE TRIBUNAL

The tribunal will only accept participants from nations that have signed the accord. It should be noted that some non-state entities may become parties to the convention for the purposes of the convention under Article 1(2)(2) and Article 305. The Jurisdiction, the enterprise, state enterprises, natural and juridical people, and, of course, private firms are all welcome to participate in the seabed disputes forum. Examples include the Cook Islands, Niue, and international organizations.⁷

⁵Annex VI of the convention.

⁶Article.289 of the UNCLOS and Art.15 of the rules of ITLOS; Article 5 of UNCLOS 1982. Article.2 of the statute, A quorum of eleven judges is required to constitute the tribunal,Art.13. Article.8,9-22 of the rules of ITLOS(as amended in march-sept 2001)

⁷ The Cook Islands is in fact a state party since it has ratified the convention.

IV. ITLOS: JURISDICTION

The ITLOS jurisdiction is based on the convention's laws, as well as any other agreement that grants the tribunal authority⁸. All tribunals mentioned under Article 287 have the jurisdiction over all issues involving the application and interpretation of the convention⁹, as well as all international agreements connected to the convention's purposes¹⁰.

The ICJ, arbitral tribunals created under Annex VII of the treaty, and special arbitral tribunals formed under Annex VII are the competent courts and tribunals, according to Article 287, paragraph 1 in line with Annex VII Article 1.

As it relates to:

- (1) Marine Scientific Research.
- (2) Fisheries.
- (3) Navigation, including pollution from ships and dumping.
- (4) Marine Environmental Protection.¹¹

The jurisdiction extends to all disputes and applications brought before it in conformity with the treaty. It also encompasses any topics explicitly addressed in any agreement conferring tribunal jurisdiction¹².

As noted by Rosanne and Sohn, Article 288, paragraph 2, requires that the agreement be relevant to the convention's aims, the subject matter of the agreement referred to in Article 21 will decide whether a certain dispute falls within the tribunal's jurisdiction.¹³

Professor Boyle, interprets Article 21 as giving the Tribunal broad authority to deal with any issue, whether or not it includes maritime law. "There is no basis in the agreement for the tribunal's consensual jurisdiction to be limited to law of the sea issues," he argues.¹⁴

The tribunal has jurisdiction to deal with disputes:

(A) Advisory Jurisdiction.

If "an international agreement relating to the convention's aim" allows it, ITLOS may also

⁸ Statute of the ITLOS, in : UNCLOS, Annex VI, Article 21, p.no.183, 1982

⁹ UNCLOS, Article 288(1), p.no.132, 1982

¹⁰ UNCLOS, Article 288(2), p.132, 1982

¹¹ UNCLOS, Annex VIII, Article 1 in conjunction with Art.287(1), p.131, 190, 1982

¹² Annex VI, Art.21 of the UNCLOS 1982.

¹³ UNCLOS 1982, A commentary vol.v.P.375.

¹⁴ A, BOYLE "Dispute settlement and the law of the sea convention: problems of fragmentation and jurisdiction" ICLQ, VOL.46(1997), PP.37-54 at P.49

provide an advisory opinion on legal matters.¹⁵ Within the framework of its functions, the seabed disputes chamber is allowed to provide legal advice at the request of the councillor or the assembly.¹⁶

“Ad hoc chambers of three judges may be constituted if one of the disputing parties requests it. With the approval of the parties to the matter, the seabed disputes chamber establishes the composition.”¹⁷

The tribunal has constituted a sea-bed conflicts chamber with authority to consider disputes pertaining to operations in the international seabed zone, as per PART XI, Section 5 of the agreement, and article 14 of the law. Eleven judges make up the chamber, who are evenly dispersed geographically and represent the world's major legal systems.¹⁸

In addition to offering advisory views, the seabed disputes chamber is empowered to make recommendations on legal matters happening within the scope of the international seabed authority's operations at the request of the international seabed authority's assembly or council. These suggestions must be made as quickly as feasible.¹⁹

In line with article 290 of the convention²⁰, the tribunal²¹, the seabed disputes chamber and the court have the authority to impose temporary remedies. ‘In addition to the instance of interim under article 290, the agreement provides for another case in which the tribunal has (nearly) sole obligatory authority. This is the method outlined in article 292 for the quick release of boats and sailors. For the tribunal to have jurisdiction, several conditions must be met.²² The tribunal may also create chambers of three or more members, as well as a five-person summary process chamber if it thinks proper.²³

(B) Contentious Jurisdiction.

The Tribunal has authority over all questions relating to the Treaty's interpretation and execution under Articles 298 and 297, respectively, of the Convention. All disputes filed before the

¹⁵ Rules of ITLOS, Article 138.

¹⁶ Article 191 UNCLOS 1982.

¹⁷ Articles 187 and 188 of the convention and article 36 of the statute, and article 27 of the rules.

¹⁸ The chamber is available to state parties, the international seabed authority, and those institutions listed in PART XI, Section 5 of the agreement. Articles 23-5 of the regulations provide for the selection of ad hoc judges.

¹⁹ Articles 159(10) and 191.

²⁰ The resolution on internal judicial practice, 31 October 1997, and articles 40-2 of the rules.

²¹ Article 25(1) of the statute..

²² According to article 292, paragraph 1, the parties must not agree to bring the matter of release to the court or tribunal approved by the detaining state under article 287 within ten days of their incarceration. The need to make a decision "quickly" makes it unlikely that the flag state will accept the jurisdiction of an arbitral tribunal yet to be formed by the I.C.J., which, even in proceedings like those on provisional measures, does not appear to be quick enough to deal with the needs of detained ships and crews.

²³ Article 15(3). When the entire tribunal is not in session, it may consider cases under the expedited procedure and petitions for interim measures.

tribunal under the provisions of any other agreement granting the tribunal jurisdiction are also subject to its jurisdiction. To date, the tribunal has been granted jurisdiction by a number of international accords.

V. SEA DISPUTES CASES HEARD: ITLOS

The convention provides under Article 292 that “if a state party detains a vessel flying the flag of another state party and fails to comply with the immediate release requirement upon payment of a reasonable bond or other financial security, the vessel shall be freed. The issue of release might be brought up before the tribunal.”²⁴

Since its inception in 1997, the tribunal has heard a number of cases. ITLOS heard a case involving “rapid release.” And other:

- (1) The M/V Saiga²⁵
- (2) The camouco case²⁶
- (3) The monteconfurco case²⁷
- (4) The Grand Prince case²⁸

Also, in situations of ITLOS on vessel and crew arrest and detention, The “ARA freed case”²⁹ deals with interim measures, and it questioned the validity of Ghana's custody of an Argentine warship. The “M/V VIRGINA G case”³⁰ concerns a challenge to the detention of a Panamanian vessel engaged in fueling operations for “fishing vessels in Guinea-Exclusive Bissau's Economic Zone.” The “M/V Louisa” case³¹ concerns a challenge to Spain's arrest of the vessel's crew for violating regulations governing submerged cultural treasures. Furthermore, the “Nordstar”³² case concerns a challenge to the detention of a Panamanian vessel supplying oil in Italy's exclusive economic zone.

The “Enri lexica”³³ incident involves provisional measures to challenge the legality of the arrest and detention of demonstrations and Greenpeace ship by Italian military armed guards on Italian ship who killed an Indian fisherman in India's Exclusive Economic Zone, and the “Arctic

²⁴ Y. Tanoua, 'prompt Release' in the UNCLOS 1982.

²⁵ Saint Vincent & granadines v Guinea 1992.

²⁶ Seychelles v France, 2000.

²⁷ Ibid.

²⁸ Belize v. France, 2001.

²⁹ Argentina v. Ghana.

³⁰ Panama/Guinea – Bissau.

³¹ Japan v. Russian federation, 2007.

³² Panama v. Italy.

³³ Italy v. India.

sunrise”³⁴ case deals with provisional measures to challenge the legality of the arrest and detention of Greenpeace ship and demonstrations by Italian ship. Similarly, ITLOS the Sub-Regional fisheries commission's request for an Advisory opinion,³⁵ and Advisory views on the duties and obligations of nations sponsoring people and organizations with respect to operations in the area.³⁶

Furthermore, the ITLOS will not only perform adjudicative functions, but will also impose interim measures in order to protect the interests of the parties to the dispute and prevent the conflict from spiraling out of control. As a result, the tribunal is responsible for resolving disagreements over the convention's interpretation and application, as well as related documents.³⁷ Also, included are cases on environmental obligations and fisheries by ITLOS, including the case of the southern blue fin tuna³⁸ and the case of the protection and sustainable exploitation of swordfish populations in the south-east Pacific Ocean³⁹. The instance of the Mox plant⁴⁰, as well as the case of Singapore's land reclamation in and around the Johar Straits.⁴¹

VI. CONCLUSION/SUGGESTIONS

The ITLOS has earned a reputation for fast and professional case administration in its 13 years of existence, and it has already made a substantial contribution to the progress of international law. It has the capacity and resources to handle a wide range of conflicts, and it is well-equipped to carry out its duties in a timely, cost-effective, and efficient manner in accordance with the United Nations Convention on the Law of the Sea. There were 18 cases in all, with 12 involving fisheries and thirteen falling within the Tribunal's required jurisdiction. More cases are likely to be brought with the tribunal as countries get more active in the law of the sea dispute settlement processes created by UNCLOS 1982.

As intended by the framers of the convention **“we are seeing the development of a multifaceted system for the settlement of law of the sea-related disputes with ITLOS as an important player”**⁴².

To summarise, ITLOS' mission may help to promote the international legal order over the

³⁴ Netherlands v Russian federation case.

³⁵ ITLOS 2014 received a request for an advisory opinion.

³⁶ In 2010, the sea-bed Disputes Chamber received a request for an advisory opinion.

³⁷ The internal judicial practice of the ITLOS by D.H. Anderson, judge, ITLOS, IJIL published by Indian society of International law, New Delhi, Vol. 38, PG. no.3 & 4 december 1998.

³⁸ Chile/ European union (2000-2009)

³⁹ Ireland v United kingdom.

⁴⁰ Malaysia v. Singapore.

⁴¹ Ibid.

⁴² Statement by Dame Rosalyn Higgins, President of the international court of justice, on the occasion of the tenth anniversary of the tribunal.

oceans, as well as the stability, pillars of peace, and cooperation in the the protection and preservation of the global marine environment for current and future generations as well as rational and equitable use of marine resources.

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