

## **ITLOS and Dispute Settlement Me**

## Disclaimer

The opinions expressed herein do not necessarily reflect those of the Royal Government of Cambodia, the United Nations, or the Nippon Foundation of Japan.

## **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 procedures

- 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 Tribunal<sup>2</sup>. 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 Guinea<sup>3</sup>.

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

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<sup>2</sup> Gudmundure Eiriksson, ITLOS, p 2.

<sup>3</sup> Report of ITLOS.

Procedure. The Tribunal has formed two other Chambers, one to deal with fisheries disputes and the other with marine environment dispute<sup>4</sup>. 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 court<sup>5</sup>.

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 area<sup>6</sup>. It has competence

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 (benth Meelaw )5.3the Steograetermi

<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

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 Tribunal<sup>16</sup>. The Vice President is an ex officio member of the Chamber of Summary Procedure<sup>17</sup>. 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 exist<sup>18</sup>. 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 Tribunal<sup>19</sup>.

## **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 term<sup>20</sup>. The member of the Chambers shall represent the principal legal system of the world and assure the equitable geographical distribution<sup>21</sup>. 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 composition<sup>22</sup>. If there is a vacancy, the Tribunal shall select one among its members to hold office for the remainder of predecessor's term<sup>23</sup>. 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

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<sup>16</sup> Ibid, Article 13

<sup>17</sup> Ibid, Article 28

<sup>18</sup> Resolution of the Tribunal, article 6.

<sup>19</sup> Rules, Article 4

<sup>20</sup> Annex VI, Article 35, para 3.

<sup>21</sup> Ibid, Article 35, para. 2

<sup>22</sup> Ibid, Article 35, para. 5

<sup>23</sup> 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 Group<sup>24</sup>.

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 D6 -1.0m7()s

<b>Name</b>	<b>Title</b>	<b>Country</b>
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**

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:

<b>Name</b>	<b>Title</b>	<b>Country</b>
Rüdiger Wolfrum	President	Germany
Joseph Akl	Members	Lebanon
Alexander Yankov	-	Bulgaria
L. Dolliver M. Nelson	-	Granada
Tafsir Malick Ndiaye	-	Senegal

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:

<b>Name</b>	<b>Title</b>	<b>Country</b>
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

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 assents<sup>28</sup>. 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 accordingly<sup>29</sup>.

#### **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 Tribunal<sup>30</sup>. 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 job<sup>31</sup>. Every expert will make the solemn declaration before the making any statement<sup>32</sup>.

#### **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

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<sup>28</sup> Ibid, article 30 (1).

<sup>29</sup> Ibid, article 30 (2).

<sup>30</sup> Rules, article 42

<sup>31</sup> Ibid, article 15

<sup>32</sup> Rules, article 79

event of the office becoming vacant<sup>33</sup>.

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 Rules<sup>34</sup>.

#### **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 Tribunal<sup>35</sup>. 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*<sup>36</sup>. 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*<sup>37</sup>.

#### **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.

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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 thereafter<sup>38</sup>Tribunal ( t)5.0v the urisdent ationthione cute a4( )TJ0 -1.132 T internationalorgte Natsier

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 Convention<sup>43</sup>.

#### **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 functions<sup>44</sup>. 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 proceedings<sup>45</sup>. 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 based<sup>46</sup>. In case it is brought by notification, it is accompanied by an original or certified copy of the special

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<sup>43</sup> See the list of procedure chose by States in Appendix 1

<sup>44</sup> Statute, article 16.

<sup>45</sup> 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.

<sup>46</sup> Rules, article 54.

agreement. Equally, the notification indicates the precise subject of the dispute and identifies the parties to the dispute<sup>47</sup>. 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

within the same time limits<sup>54</sup>.

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 them<sup>55</sup>.

**(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 elaboration<sup>56</sup>. 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 case<sup>57</sup>. 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 proceeding<sup>58</sup>. The hearing of the case is conducted in public, unless the Tribunal decides otherwise or unless the parties demand that the public not be admitted<sup>59</sup>. 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 decision<sup>60</sup>.

During the oral proceedings, the Tribunal indicates to the

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<sup>54</sup> Ibid, article 61.

<sup>55</sup> Ibid, article 62

<sup>56</sup> Article 2 of the Resolution on the on the Internal Judicial Practice of the Tribunal.

<sup>57</sup> Resolution on the International Judicial Practice of the Tribunal, article 2 and 3.

<sup>58</sup> Rules, article 69

<sup>59</sup> Ibid, article 74

<sup>60</sup> 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 submissions<sup>61</sup>. 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 present<sup>62</sup>. 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 draft<sup>63</sup>. 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

Separated or dissenting opinions will be submitted within a time-limit fixed by the Tribunal<sup>65</sup>. 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 Registrar<sup>66</sup>. 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 based<sup>67</sup>.

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 Nations<sup>68</sup>. Every State Party shall be entitled to nominate four arbitrators to constitute the list<sup>69</sup>. The arbitrators, which the parties have nominated, shall have similar qualification to those nominated for member of the Tribunal<sup>70</sup>. 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 national<sup>71</sup>. 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

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<sup>65</sup> Ibid, article 8

<sup>66</sup> Statute, article 30

<sup>67</sup> Annex VII, article 1.

<sup>68</sup> Ibid, article 2

<sup>69</sup> Ibid, article 2

<sup>70</sup> Ibid, article 2

<sup>71</sup> 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 appointment<sup>72</sup>.

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 vote<sup>73</sup>. 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 forward the sug to ea

navigation, including pollution from vessels and by dumping, by the International Maritime Organization<sup>76</sup>. 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 whom one may be its national, from the list of experts relating to the matters in the dispute<sup>77</sup>. 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 national<sup>78</sup>. 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 State<sup>79</sup>. If the parties to the dispute are unable to reach agreement on the

**Appendix 1**

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

State/with date of declaration	<p align="center"><b>Choice of Procedure Declaration under article 287</b></p> <p align="center">(numbers indicate the order of preference, if number 1 appears more than one procedure, no order of preference has been specified)</p>				Optional exceptions to applicability of Part XV, section 2, of Convention, under article 298
	Internati onal Tribunal for Law of the Sea  (ITLOS)	Internati onal Court of Justice  (ICJ)	Arbitral Tribunal Constitu ted in Annex VII	Special Arbitral Tribunal Constitut ed in Annex VIII	Declaration indicating that

				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			

FRANCE (upon ratification)	No declaration under article 287 made				Disputes referred to in article 298, paragraph 1 (a), (b), and (c), of the Convention
(upon accession)	1	3	2	-	--
(upon ratification)	1	-	-	-	--
		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.
				For all the categories of disputes specified therein	--
	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.
(upon ratification and on 26 Feb 97)	1	1	-	-	Disputes referred to in article 298, paragraph 1 (a), of the Convention
(upon accession)	1	1	-	-	--
(upon accession)	1	1	-	-	--
(on 6 Jan 2003)	1	1	-	1	Disputes referred to in article 298, paragraph 1 (a), and (b), of the Convention
(upon ratification)	-	1	-	-	--
					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.

