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"Jurisdiction of the International Tribunal for Law of the Seas"

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ABSTRACT

Most international disputes are resolved within the political facade, particularly negotiation and consultation, international adjudication and other arbitral arrangements are indispensable as an important component of dispute settlement when it comes to international disputes. While there are various institutions that can serve as the means to solve law of the sea disputes, the International Tribunal for the Law of the Sea i.e. ITLOS is the specialized judicial organ designed specifically and particularly to handle such disputes.

This paper is limited mainly to the law of the seas, the Jurisdiction, procedure and practices of the International Tribunal for the Law of the Seas.

RESEARCH METHODOLOGY

The researcher has followed the doctrinal method of research. Secondary sources of information like various books, articles and websites have been used for the same.

LAW OF THE SEAS

The law of the seas is the law by which the states, coastal and land-locked or the international organisations regulate their relations in respect of those areas subject to coastal state jurisdiction and in relation to those areas of the sea and the sea bed beyond the national jurisdiction. It exists in the codified form at present, has developed steadily and gradually since the time of Grotius and they were observed by the states as customary rules of international law. From the beginning of the 17th century when the Grotious propounded the principle of "Mare Liberium" that is freedom of the seas the, middle of the 20th century the Hallmark of this law essentially that a non-regulation and laissez faire and except that of territorial waters, the law essentially endorsed the doctrine of open Sea.

Development of Law Of The Seas

With the development in trade and commerce in the 20th century and the realization of the inexhaustible use of the sea, the classic principle 'mare liberium' has been eclipsed. The doctrine of the freedom of the seas got a serious setback when President Truman proclaimed jurisdiction over the continental shelf. Many nations made sweeping claims to protect their economic and military interests. These developments stressed the urgency for codification of the law in order to give uniformity and resolve maritime conflicts between nations.

What is the continental shelf?

The geographical concept of the continental shelf is quite an old one and it is referring to the gently sloping ledges that project from the continental landmass into the seas before the steep descent to the ocean waters and which are covered with only a relatively shallow layer of water.

What are The High Seas?

By the term High seas is meant under customary rule of international law that part of the sea which are not included in the territorial waters and are beyond the national jurisdiction. High Seas are all the parts of the sea that are not included in the Exclusive Economic Zone (EEZ) or in the archipelagic waters of an archipelagic state.[1] At present the freedom of the seas is a universally recognized principle and the regime of the high seas continues to be characterized by commonage and freedom, but commonage does not mean that all states are free to take the resources of the sea and the sea bed, and freedom is subject to increasing international regulation.

JURISDICTION ON THE HIGH SEAS

The basic principle relating to the jurisdiction is that the flag state alone may exercise such rights over the ship. This was elaborated in the Lotus Case (1927) it was held that the "vessels on the high seas are subject to no authority except that of the state whose flag they fly."[2] This exclusivity is without exceptions regarding warships and ships owned or operated by state where they are used only on governmental non-commercial service. Such ships have complete immunity from the jurisdiction of the state other than the flag state.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEAS (ITLOS)

An innovative elaborate dispute settlement mechanism is provided in the 1982 convention. This mechanism is innovative in the sense that in most of the cases, it will lead into binding third party decisions in one form or another. Article 276 obliges the states parties to settle their disputes under the convention in a peaceful manner.

The general principle is that any dispute between two state parties on the interpretation or application of a provision of UNCLOS which cannot be resolved by negotiation may unilaterally be referred by either party to the dispute to an international court or arbitral tribunal for a binding decision. A state, therefore, shall be free to choose one or more of the following means for the settlement of disputes:

- The International Tribunal for the Law Of The Seas
- The International Court Of Justice
- An Arbitral tribunal or,
- A special arbitral tribunal.

The International Tribunal for Law of The Sea is one of the tribunals which has jurisdiction to decide the disputes concerning the interpretation or application of the convention. The tribunal has been established in accordance with the statute which is an integral part of the convention. The statute provides under Article 1 that the seat of the tribunal will be at the Hamburg. The tribunal shall be composed of a body of 21 independent members elected from among persons enjoying the highest reputation for fairness and integrity and the recognized competence in the field of the law of the sea. No two members of the tribunal may be nationals of the same state.

[1] Article 86 of the 1982 convention.
[2] France v. Turkey (1927)

Members of the tribunal are elected by the state parties of the same state.

Members of the tribunal are elected by the states parties by secret ballot for nine years. They are eligible for re-election.

The tribunal was established in 1996. The tribunal has formed standing special chambers for dealing with fisheries cases and for dealing with marine environment disputes. In2007, a Special Chamber was formed to deal with maritime delimitation disputes pursuant to Article 15(1) of the statute of the International Tribunal for Law of Seas, which states that the tribunal may form Special Chambers to deal with specific categories of disputes. The tribunal has also framed rules for its functioning which were adopted in 1997. The tribunal shall have its President and Vice-President for three years. They are eligible for re-election. The tribunal is open to states parties to the convention. The jurisdiction of the tribunals comprises all the disputes and all the applications submitted to it and all the matters specifically provided for in any other agreements for in any other agreement which confers jurisdiction on the tribunal. The tribunal has exclusive jurisdiction with respect to the disputes relating to activities in the International sea-bed area. The tribunal shall decide all disputes and applications in accordance with Article 297 of the convention of the Law of the Seas which provides that it shall apply the provisions of the Convention and other rules of International Law not incompatible with the Convention. The tribunal may decide case ex acquo et bano, if the parties so agree. All questions shall be decided by the majority of the members 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 shall have a casting vote. The judgement shall state reasons on which it is based. The decision of the tribunal is final and shall be compiled with by all the parties to a dispute. The decision shall have no binding force except between the parties in respect of that particular dispute. In the event of the dispute as to the meaning of scope of the decision, the Tribunal shall construe it upon the request of any party.

JURISDICTION OF INTERNATIONAL TRIBUNAL ON LAW OF THE SEAS

The ultimate work of the Tribunal is linked to a document which is The United Nations Convention on the Law of the Sea, the jurisdiction of the ICJ is way more complex and complicated as compared to the work of the tribunal. ICJ's work is based on hundreds of treaties that show the larger subject-matter scope of its jurisdiction. Despite this remark, the jurisdictional provisions of the Convention are extremely complex, with different ways the Tribunal has to deal with a large number of exceptions and limitations. Article 288 and 287 of UNCLOS form the basis of the jurisdiction of the International Tribunal. 288 Article provides that the Tribunal has jurisdiction over any dispute concerning the interpretation and application of the Convention and any dispute concerning the interpretation and application of an international agreement. However, such jurisdiction is not exclusively conferred to the Tribunal. Jurisdiction has also been assigned to other international courts and tribunals under article 288 read along with article 287 Paragraph I. There are the ICJ, the arbitral tribunal constituted in accordance the Convention and, for disputes over certain matters relating to the Convention (fishing, protection and preservation of the marine environment, scientific research and navigation and ship pollution and dumping), the Special Arbitral Tribunal provided for by

Annex VIII of the Convention. So, as per Article 287 paragraph 1 of the Convention, the jurisdiction to adjudicate is concurrently recognized by all international judicial bodies and are likely to intervene in disputes concerning the law of the sea.

Article 286 talks about the exercising of the compulsory jurisdiction of the tribunal. However such may be done only under conditions prescribed under Articles 281, 282, 283 of The United Nations Convention on the Law of the Sea.

The jurisdiction of the International Tribunal for the Law of the Sea is not limited to the provisions of Article 288 of The United Nations Convention on the Law of the Sea.[3] Looking at these different provisions, some differences can be seen between the International Tribunal for Law of the seas and the ICJ. These differences or particularities of this Tribunal can be addressed in respect of its jurisdiction ratione personae (by reason of his person; jurisdiction of a judge in a case which has international elements may depend on the whereabouts of the plaintiff or, the defendant) and its jurisdiction ratione materiae (subject-matter jurisdiction). [4]

The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with the Convention. It also includes all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal (Statute, article 21). The Tribunal has jurisdiction to deal with disputes i.e. contentious jurisdiction and legal questions i.e. advisory jurisdiction submitted to it.[5]

Contentious jurisdiction

The Tribunal has jurisdiction over all disputes concerning the interpretation or application of the Convention, subject to the provisions of article 297 and to the further declarations made in accordance with article 298 of the Convention.

Article 297 and declarations made under article 298 of the Convention do not prevent parties from agreeing to submit to the Tribunal a dispute otherwise excluded from the Tribunal's jurisdiction under these provisions (The United Nations Convention on the Law of the Sea, article 299). The Tribunal also has jurisdiction over all disputes and all applications submitted to it in reference to the provisions of any other agreement conferring jurisdiction on the Tribunal.

It talks about three different arenas:

- The compulsory jurisdiction resulting from the choice made in application of article 287.
- The compulsory jurisdiction resulting from urgent proceedings.
- The compulsory jurisdiction of the disputes related to the activity in an area.

3 Diouf, Ousmane, "The international tribunal for the law of the sea" (ITLOS) 2014.
4 http://www.duhaime.org/LegalDictionary/R/RationePersonae.aspx
5 https://www.itlos.org/jurisdiction/

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Advisory jurisdiction

The Seabed Disputes Chamber is competent to give an advisory opinion on legal questions arising within the scope of the activities of the Assembly or Council of the International Seabed Authority (article 191 of the Convention).

The Tribunal may also give an advisory opinion on a legal question if this is provided for by "an international agreement related to the purposes of the Convention."[6] To an extent, the procedural mechanism by which the Seabed Disputes Chamber may be requested to entertain an advisory opinion is the same as the one applicable before the PCIJ and ICJ. The decision to request an advisory opinion is to be taken by a collective body and not single handedly, which in the case of the Seabed Disputes Chamber may either be the Assembly or the Council of the International Seabed Authority.

In Contrast with requests for an advisory opinion to be introduced before the Seabed Disputes Chamber, requests to the Tribunal for an advisory opinion can be made on the basis of an international agreement also. A bilateral or a multilateral agreement appears to be considered an international agreement for this purpose.

Most probably such an international agreement may be made between: States, between States and international organizations or between international organizations. This is an important procedural novelty which introduces a fresh approach to the issue of entities entitled to request advisory opinions.

The accessory jurisdiction

Apart from the above different titles of jurisdiction conferred on the Tribunal, the Convention provides for titles of jurisdiction which are in some ways accessory to other titles of jurisdiction established or to be established. The first of such jurisdictions is called the “competence of the competence” which refers to the power of the Tribunal to judge whether or not it has jurisdiction to settle a dispute submitted to it. The matter can only be tried by it in case it has the jurisdiction. The second jurisdiction is the aptitude of the Tribunal to interpret its own decisions.

PROCEDURE BEFORE THE TRIBUNAL

The procedure before the Tribunal is principally detailed in its Rules which were adopted on 28 October 1997 then amended on 15 March and 21 September 2001 and on 17 March 2009. In elaborating the Rules, the Tribunal, following the main lines drawn in its Status, had to take the Rules of the ICJ as a basis while taking into account the particular aspects of the Tribunal's jurisdiction and the need to reach a good administration of justice. Indeed the Tribunal was well aware that the ICJ was criticized because its justice is too slow and too expensive, and that, at least, some of the reasons for this were to be found in its Rules and in its other judicial practice.[7] Thus, the Tribunal decided through Article 49 of its Rules that, without limiting the right of the parties to a fair trial and to argue upon their case fully, its proceedings should be as expeditious and cost-effective, quick as possible.

6 Rules of the Tribunal, article 138.
7 Treves, 2001, P. 136.

The time-limits in proceedings

Before the Tribunal Time-limits are set in a number of provisions in the Rules of the Tribunal with the purpose of making the procedure expeditious. Article 59, para 1 which lies in the section on the written proceedings, provides that: "The time-limits for each pleading shall not exceed six months". This so-called "six-month rule" was proposed, according to Judge Treves, by scholars and practitioners to avoid the problems faced by the ICJ. [8]

In the M/V Saiga Case[9] the Tribunal stated that the fact that a State party does not comply with the Tribunal's decision is ultimately going to entail the state party's responsibility. But it did not go further in its developments. It is in its Advisory Opinion on the Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area rendered that the Tribunal has been given the opportunity to pronounce on issues regarding International liability of States Parties of the Convention. In this perspective, the Tribunal was led to consolidate the principle of international responsibility of the states,[10] but also to give a possible solution to some insufficiencies of these principles.

CONCLUSION

Tribunal is a specialized judicial body which allows it to resolve cases easily, the special composition of the tribunal with 21 judges specialized in the field of the law of the seas, might be the subject of consideration by the parties before submitting a dispute to the tribunal. A great feature of the tribunal is that it saves time as it requires much less time to reach a conclusion. The tribunal has initiated a number of campaigns to broadcast the information on its work.

The tribunal has also shown its ability to play a major role in the development of international law, particularly in the field of maritime body delimitation and the environmental law.

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8 Treves, 2001, P. 137.
9 Saint Vincent and the Grenadines v Guinea (1997)
10 Mahinga 2013, P. 338