Review of the UNCLOS Dispute Settlement System during the Past Decade: Achievements, Disadvantages, and Developments – From the Perspective of Comparative Empirical Analysis among ITLOS, PCA and ICJ

XU Zengcang*    LU Jianxiang**

Abstract: From 1996 to 2005, The International Tribunal for the Law of the Sea (ITLOS) played a role in maritime dispute-related cases. Based on a comparative empirical analysis of the settlement of maritime dispute-related cases between the ITLOS, Permanent Court of Arbitration (PCA), and International Court of Justice (ICJ) during this decade, we conclude in this paper that the ITLOS has compulsory jurisdiction over procedural disputes in relation to requests for “provisional measures” and “prompt release of vessels and crews,” and has made remarkable progress in this regard. Annex VII (Arbitration) of the UNCLOS acts as a “surplus standby,” bridging the UNCLOS and the PCA. Considering the statutory and agreed exceptions in compulsory jurisdiction by the ITLOS over maritime disputes, settlement of substantial issues has become the most obvious gap. Since the resources in the international seabed area (hereinafter “the Area”) are still under exploration, the Seabed Disputes Chamber has not accepted any cases, despite its advantages in “compulsory jurisdiction,” “parties to a case,” and “applicable law” when settling such disputes. As substantial large-scale exploitation of seabed resources develops in the Area, the Seabed Disputes Chamber will demonstrate

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great potential for resolving seabed disputes.

**Key Words:** United Nations Convention on the Law of the Sea; Dispute settlement system; International Tribunal for the Law of the Sea; Seabed Disputes Chamber

I. Introduction

The United Nations Convention on the Law of the Sea (UNCLOS), which came into effect in 1994, is the most comprehensive and most influential international maritime relationship adjusting convention. It is recognized as a milestone for establishing a new international maritime order. The dispute settlement system is established under Part XV (Settlement of Disputes), other relevant provisions in the main text and Annexes V (Conciliation), VI (Statute of the International Tribunal for the Law of the Sea), VII (Arbitration) and VIII (Special Arbitration), which constitute the core part of the UNCLOS. The International Tribunal for the Law of the Sea (ITLOS), ¹ established under the UNCLOS, has been performing its duties ever since the first set of judges was elected on 1 August 1996.² The dispute settlement system of the UNCLOS has been operating formally for the past 10 years. As revealed by a comparative empirical analysis of the settlement circumstances and characteristics of maritime dispute-related cases heard by the ITLOS, the Permanent Court of Arbitration (PCA), and the International Court of Justice (ICJ) ever since its establishment, the ITLOS has made remarkable achievements in procedural disputes in relation to requests for “provisional measures” and “prompt release of vessels and crews;” Annex VII (Arbitration) has become a bridge between the UNCLOS and the PCA; the settlement of substantial

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¹ ITLOS as referred to in this article also includes the Seabed Disputes Chamber. On one hand, the relatively independent Chamber is significantly different from the ITLOS in terms of jurisdiction, parties to a case, and applicable law; but on the other hand, both the Chamber and the ITLOS are adjusted under the Statute of the International Tribunal for the Law of the Sea and the Rules of the International Tribunal for the Law of the Sea, absorbing the former into the latter.

² Jurist and Prof. Zhao Lihai was elected as one of the first judges for the International Tribunal for the Law of the Sea. After Prof. Zhao passed away of illness in October of 2000, the former Chief of the Department of Treaty and Law under the Ministry of Foreign Affairs of the PRC Xu Guangjian took over and later was elected for a second term.
issues in maritime disputes has become the “Achilles Heel”\textsuperscript{3} and the Seabed Disputes Chamber (hereinafter “the Chamber”) demonstrates great potential for resolving seabed disputes.

II. Comparative Analysis of Maritime Dispute-Related Cases Heard by Three Major International Institutions during the Past Decade

Maritime disputes are mainly referred to three permanent international institutions, namely the ITLOS, the PCA and the ICJ. In the following sections, we will review the maritime dispute-related cases heard by these three institutions since the establishment of the ITLOS:

A. ITLOS

The ITLOS has accepted 13 cases so far, as listed in Table 1.\textsuperscript{4}

\begin{table}[h]
\centering
\begin{tabular}{llll}
\hline
S.N. & Case Name & Parties & Cause	\tabularnewline
\hline
1 & The \textit{M/V “Saiga”} Case & St. Vincent & Prompt release	\tabularnewline & & Grenadines v. Guinea & \\
2 & The \textit{M/V “Saiga”} (No. 2) Case & St. Vincent & Substantial issue	\tabularnewline & & Grenadines v. Guinea & \\
3 & South Bluefin Tuna Case & New Zealand v. Japan & Provisional measures \\
4 & South Bluefin Tuna Case\textsuperscript{5} & Australia v. Japan & Provisional measures \\
5 & The “\textit{Camouco}” Case & Panama v. France & Prompt release \\
\hline
\end{tabular}
\caption{ITLOS Cases}
\end{table}

\textsuperscript{3} Achilles Heel is a metaphor for weak points or shortcomings. In Greek mythology, when Achilles was a baby, his mother was foretold that he would die young in a war. To prevent his death, his mother, Thetis, took Achilles to the River Styx, which was believed to offer powers of invulnerability, and dipped his body into the water. But as Thetis held Achilles by the heel, his heel was not touched by the water of the magical river, so, his heel became the single weak point of his entire body.

\textsuperscript{4} Table 1 is compiled by the authors based on the data available on the official website of the ITLOS (up to December 31, 2006).

\textsuperscript{5} The New Zealand v. Japan case and the Australia v. Japan case were consolidated, thus the ITLOS considered them as one case.
(Continued from the previous page)

<table>
<thead>
<tr>
<th></th>
<th>Case</th>
<th>State(s)</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>The “Monte Conforco” Case</td>
<td>Seychelles v. France</td>
<td>Prompt release</td>
</tr>
<tr>
<td>7</td>
<td>Case concerning the conservation and sustainable exploration of</td>
<td>Chile v. European Union</td>
<td>Substantial issue</td>
</tr>
<tr>
<td></td>
<td>swordfish stocks in the South-Eastern Pacific Ocean</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>The “Grand Prince” Case</td>
<td>Belize v. France</td>
<td>Prompt release</td>
</tr>
<tr>
<td>9</td>
<td>The “Chaisiri Reefer 2” Case</td>
<td>Panama v. Yemen</td>
<td>Prompt release</td>
</tr>
<tr>
<td>10</td>
<td>The MOX Plant Case</td>
<td>Ireland v. U.K.</td>
<td>Provisional measures</td>
</tr>
<tr>
<td>11</td>
<td>The “Volga” Case</td>
<td>Russia v. Australia</td>
<td>Prompt release</td>
</tr>
<tr>
<td>12</td>
<td>Case concerning land reclamation by Singapore in and around the</td>
<td>Malaysia v. Singapore</td>
<td>Provisional measures</td>
</tr>
<tr>
<td></td>
<td>Straits of Johor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>The “Juno Trader” Case</td>
<td>St. Vincent &amp; the Grenadines v. Guinea-Bissau</td>
<td>Prompt release</td>
</tr>
</tbody>
</table>

As shown in Table 1, the ITLOS has decided 13 cases so far, including 7 cases related to prompt release of vessels and crews and 4 cases arising from requests for provisional measures, accounting for 84.6% of all cases. The only 2 cases concerning substantial issues, namely The M/V “Saiga” (No. 2) Case and the Case concerning the Conservation and Sustainable Exploration of Swordfish Stocks in the South-Eastern Pacific Ocean, accounted for only 15.4% of the cases decided by the ITLOS.

**B. PCA**

Based on the Convention for Peaceful Settlement of International Conflicts concluded at the first Hague Peace Conference in 1899, the PCA was established in 1900. Following a long silence, a series of reforms renewed and revived the
PCA, resulting in a sharp increase in the number of cases it received. Since the establishment of the ITLOS, the PCA has decided 5 maritime dispute-related cases, as shown in Table 2:

<table>
<thead>
<tr>
<th>S.N.</th>
<th>Acceptance Time</th>
<th>Parties</th>
<th>Cause</th>
<th>Arbitration Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>November 1999</td>
<td>Eritrea v. Yemen</td>
<td>Island sovereignty and maritime delimitation dispute</td>
<td>Intergovernmental arbitration agreement</td>
</tr>
<tr>
<td>3</td>
<td>July 2003</td>
<td>Malaysia v. Singapore</td>
<td>Land reclamation by Singapore in and around the Straits of Johor</td>
<td>Part XV and Annex VII of the UNCLOS</td>
</tr>
<tr>
<td>5</td>
<td>August 2004</td>
<td>Barbados v. Trinidad</td>
<td>Maritime delimitation dispute</td>
<td>Part XV and Annex VII of the UNCLOS</td>
</tr>
</tbody>
</table>

As shown in Table 2, (a) from the perspective of cause of action, all five of the cases accepted by the PCA were concerned with substantial issues, including four cases concerning maritime delimitation disputes and one case concerning a marine environment dispute; (b) regarding arbitration basis, all cases except the

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6 The PCA had heard a series of inter-State dispute-related cases during the several decades following its establishment. However, with establishment of the International Court of Justice and its predecessor, the Permanent Court of International Justice, the PCA became overshadowed and was hardly referred to by international society, so that it was believed by not a few jurisprudents that the PCA was merely a “historical note in literature of international law.” However, the PCA has since adopted a series of measures beginning in 1990 that has led international society to recognize it as an effective and modern dispute settlement institution.

7 Table 2 is compiled by the authors based on the data available on the official website of the PCA (up to December 31, 2006).
case concerning island sovereignty and maritime delimitation between Eritrea and Yemen were submitted in accordance with the provisions under Part XV and Annex VII of the UNCLOS; and (c) before the PCA accepted the MOX Plant Case (Ireland v. U.K.) and the Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), the ITLOS had adopted provisional measures.

C. ICJ

The ICJ was established on April 3, 1946 as a judicial organ, one of the six major U.N. organs. According to the Charter of the United Nations and the Statute of the International Court of Justice, the jurisdiction of the ICJ may be divided into two categories, namely contentious cases and advisory opinion. Ever since the ITLOS was established, the ICJ has not provided any advisory opinions on maritime disputes. Maritime dispute-related cases accepted by the ICJ are listed in Table 3:8

<table>
<thead>
<tr>
<th>S.N.</th>
<th>Acceptance Time</th>
<th>Cause</th>
<th>Parties</th>
<th>Hearing Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1999</td>
<td>Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea</td>
<td>Nicaragua v. Honduras</td>
<td>1999–</td>
</tr>
<tr>
<td>2</td>
<td>2001</td>
<td>Territorial and Maritime Dispute</td>
<td>Nicaragua v. Colombia</td>
<td>2001–</td>
</tr>
</tbody>
</table>

8 Table 3 is compiled by the authors based on the data available on the official website of the ICJ (up to December 31, 2006).
As indicated in Table 3, all 4 of the cases accepted by the ICJ involved substantial issues concerning maritime delimitation disputes and none of them were in relation to requests for provisional measures or prompt release of vessels and crews.

III. Dealing with Procedural Cases in Relation to Requests for Provisional Measures or Prompt Release of Vessels and Crews: The ITLOS Has Made Remarkable Achievements

As indicated in Tables 1-3, the ITLOS has decided 10 cases in regard to requests for provisional measures and prompt release of vessels and crews, while the PCA and the ICJ have not received any such cases. Therefore, the ITLOS is obviously advantageous in this connection, because it has compulsory jurisdiction over cases requesting provisional measures and prompt release of vessels and crews under the UNCLOS, unlike the PCA, which lacks jurisdiction over these areas, and the ICJ, which lacks explicit provisions on jurisdiction over requests for prompt release of vessels and crews, and has not exercised jurisdiction over provisional measures since the establishment of the ITLOS due to its prudent attitude toward this issue, despite its even greater authority in this area.

A. The ITLOS Has Compulsory Jurisdiction over Requests for Provisional Measures and Prompt Release of Vessels and Crews

1. Provisional Measures

“Provisional Measures” (as referred to in the Statute of the International Tribunal for the Law of the Sea), also known as Provisional Protection (as referred to in the Statute of the International Court of Justice), means the parties to a dispute may file an application for or the court itself may on its own initiate the protection of property or rights and interests in urgent situations when such rights and interests are being damaged or threatened before or after litigation or arbitration procedures.

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9 The ICJ adopted provisional measures in the case concerning Passage through the Great Belt (Finland v. Denmark) dated in 1991 (before the ITLOS commenced its operations).
are initiated. According to the provisions in Article 290 of the UNCLOS, the ITLOS is entitled to prescribe such provisional measures. Pending the constitution of an arbitral tribunal to which a dispute is being submitted, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the ITLOS or, with respect to the activities in the Area, the Chamber, may prescribe provisional measures in accordance with the provisions under the UNCLOS; once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures.

2. Prompt Release of Vessels and Crews

Where the authorities of a State Party have detained a vessel flying the flag of another State Party, it may cause adverse effects on the normal operations of the detained vessel and personal harm to the crew. Therefore, Article 292 of the UNCLOS provides that the ITLOS shall be entitled to prescribe prompt release of vessels and crews. Upon the posting of a reasonable bond or other financial security, the flag State Party of the detained vessel, failing to reach an agreement on the question of release from detention with the detaining State within 10 days from the time of detention, may directly file an application with the ITLOS for release, without being bound by the selection of court or tribunal in accordance with Article 287 of the UNCLOS.

B. The PCA Does Not Have Jurisdiction over Requests for Provisional Measures or Prompt Release of Vessels and Crews

Like ordinary arbitration institutions, the PCA shall not be entitled to prescribe provisional measures in the cases submitted to it or deal with requests for prompt release of vessels and crews. The applicant can only apply to a competent court for provisional measures or a competent tribunal for prompt release of vessels and crews when the circumstances require so. For example, in the MOX Plant Case (Ireland v. U.K.) heard by the PCA, Ireland applied to the ITLOS for provisional measures, which was finally realized on December 3, 2001.

C. The ICJ Has Been Holding a Prudent Attitude in Prescribing Provisional Measures and a Vacancy in Terms of Explicit Provisions on Its Jurisdiction over Prompt Release of Vessels and Crews

According to the Rules of the ICJ, it may at any time prescribe provisional
measures on one or both parties to a dispute on its own initiative, as the case may be, which means the ICJ is competent to adopt provisional measures even before litigation procedures are initiated, going even further than the ITLOS which is supposed to only do so upon application by the applicant during the litigation or arbitration process. However, prudent as it is in this regard, the ICJ has never really prescribed provisional measures in maritime dispute-related cases ever since the establishment of the ITLOS. Furthermore, the ICJ has also never dealt with any request for prompt release of vessels and crews, considering the vacancy of explicit provisions on its jurisdiction over such matters.

VI. Annex VII of the UNCLOS: A Bridge between the UNCLOS and the PCA

According to Article 287 of the UNCLOS, arbitration provided for in Annex VII may act as a standby and shall be based on when the parties to a dispute submit maritime disputes to the PCA for arbitration. Obviously, it has become a bridge between the UNCLOS and the PCA.

A. “Standby Applicability” of Annex VII of the UNCLOS

According to Article 287 of the UNCLOS (Choice of Procedure), arbitration provided for in Annex VII shall have “standby applicability.” As provided for in Paragraph 1, when signing, ratifying or acceding to the UNCLOS or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention: (a) the ITLOS established in accordance with Annex VI; (b) the ICJ, (c) an arbitral tribunal constituted in accordance with Annex VII, and (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein. Paragraph 3 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. According to the provisions in Paragraph 4, if the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree. And as stipulated in Paragraph 5, if the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only
to arbitration in accordance with Annex VII, unless the parties otherwise agree. Therefore, in case of any contradiction between State Parties in choosing the manners of dispute settlement, or should one party have a choice while the other has not, or neither party choose one of the four options given in Article 287(1), the arbitration provided for in Annex VII shall automatically apply.

B. Submission to the PCA in Accordance with Annex VII of the UNCLOS

Although provided for in Annex VII, the arbitration procedure has never been practiced or publicized since the UNCLOS became effective. However, all PCA cases concerning maritime disputes were decided based on Annex VII of the UNCLOS. Take the MOX Plant Case (Ireland v. U.K.) as an example. Ireland first filed a request for provisional measures with the ITLOS, which were adopted on December 3, 2001, and then it submitted the case to the PCA in accordance with Annex VII. In such a way, an organic link between Annex VII and the PCA can be seen, as the arbitration provided for in the former becomes a bridge between the UNCLOS and the PCA.

The authors find there are three reasons entailing a submission of arbitration to the PCA in accordance with Annex VII of the UNCLOS, rather than to an arbitral tribunal constituted in accordance with Annex VII. Firstly, it is still inadequate to initiate the arbitration procedures provided for in Annex VII. As revealed by an analysis of the ITLOS cases, 11 cases concerned provisional measures or prompt release of vessels and crews, which are all procedural matters under its compulsory jurisdiction; only 2 cases concerned substantial disputes, which, based on the settlement method selected by the parties thereto, are also inadequate to initiate the arbitration procedure provided for in Annex VII. Secondly, it is not provided under the UNCLOS that other international juridical or arbitration institutions shall not accept submission of disputes beyond compulsory jurisdiction. The ITLOS having compulsory jurisdiction over provisional measures and prompt release of vessels and crews does not exclude other competent international juridical or arbitration institutions to accept submission of maritime disputes, creating the conditions for submission of maritime delimitation and environment disputes to the PCA. Thirdly, the reputation and characteristics of the PCA regarding arbitration are also contributive. Some sovereign States prefer the PCA arbitration as it enjoys a good reputation for international arbitration – especially inter-State arbitration. Furthermore, it fully respects the autonomy of the parties to the case and allows
them to choose or determine the arbitration procedure by agreement. Therefore, it is no surprise that the parties to a maritime dispute submitted to the PCA choose the arbitration procedures in Annex VII of the UNCLOS.

V. Dealing with Substantial Issues in Maritime Disputes: The “Achilles Heel” of the ITLOS

As shown in Table 1, of the 13 cases decided by the ITLOS, only 2 cases dealt with substantial issues, and the other 11 all concerned provisional measures and prompt release of vessels and crews that involve procedural issues. The settlement of substantial issues in cases concerning maritime disputes has become the most obvious gap for the ITLOS, and the main reason is that the compulsory nature of jurisdiction by the ITLOS is impaired by statutory and agreed exceptions under the UNCLOS. By contrast, most PCA and ICJ maritime cases arise from maritime delimitation disputes, falling into the category of matters that may be excluded by agreement under the UNCLOS.

A. Compulsory Jurisdiction Exceptions of the ITLOS

1. Statutory Exceptions

Statutory exceptions refer to matters explicitly excluded from compulsory jurisdiction under the UNCLOS, including:

   a. Disputes concerning Marine Scientific Research

   According to the provisions in Article 297(2)(a) of the UNCLOS, the coastal State shall not be obliged to accept the submission to such settlement of any dispute arising out of: (i) the exercise by the coastal State of a right or discretion in accordance with Article 246 (Marine scientific research in the exclusive economic zone and on the continental shelf); or (ii) a decision by the coastal State to order suspension or cessation of a research project in accordance with Article 253 (Suspension or cessation of marine scientific research activities).

   b. Fishery Disputes

   As provided in Article 297(3)(a) of the UNCLOS, the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the
terms and conditions established in its conservation and management laws and regulations.

2. Optional Exceptions

What is meant by optional exceptions is that a State Party may exclude certain disputes from jurisdiction by means of a written declaration. According to the provisions of Article 298 of the UNCLOS, a State Party may declare that it does not accept compulsory jurisdiction over the following three categories of disputes:

a. Sea Boundary Disputes

Disputes concerning the interpretation or application of Articles 15 (Delimitation of the territorial sea between States with opposite or adjacent coasts), 74 (Delimitation of the exclusive economic zone between States with opposite or adjacent coasts) and 83 (Delimitation of the continental shelf between States with opposite or adjacent coasts) relating to sea boundary delimitations, or those involving historic bays or titles.

b. Military Activities

Military activities include disputes concerning military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under Article 297(2)–(3).

c. Activities of the Security Council of the United Nations

Disputes arise when the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations.

B. The PCA’s and the ICJ’s Unrestricted Maritime Dispute Jurisdiction

Based on the PCA arbitration procedure rules, the Statute and Rules of the ICJ, the restrictions stipulated on the ITLOS do not apply to the PCA and the ICJ, which indicates that the PCA and the ICJ have the right to handle the cases which can be excluded from the jurisdiction of the ITLOS, overcoming the deficiency of the ITLOS. In fact, the cases concerning maritime disputes heard by the PCA and the ICJ mainly arise from delimitation disputes and environment disputes that fall into the category of optional exceptions stipulated in the UNCLOS.
VI. Settlement of Seabed Disputes:  
The Chamber Has Huge Potential

Part XI of the UNCLOS provides the exploration and exploitation activities of resources in the Area. According to Article 1 (Use of terms and scope) of the UNCLOS, the “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, and “activities in the Area” means all activities of exploration for, and exploitation of, the resources of the Area. Since the resources in the Area are still under exploration and large-scale substantial exploitation activities have not been initiated, few of seabed disputes have occurred, leading to a vacancy in submitting such disputes to the Chamber. However, more and more seabed disputes have arisen as resource exploitation activities in the Area increase in both depth and scope, which is an opportunity for realizing the advantages of the Chamber in terms of compulsory jurisdiction, parties, and applicable laws.

A. Why Has the Chamber Not Accepted Any Such Cases?

As revealed by an analysis of the actual operations of the UNCLOS dispute settlement system, the Chamber has not heard any cases concerning seabed disputes in the Area, which is closely related to the seabed resource exploitation practices in the Area. The principle of common heritage of mankind and parallel system of seabed resource exploitation, and institutions such as the International Seabed Authority and the Enterprise, etc. are established under the UNCLOS in order to guarantee orderly resource exploitation activities in the Area. So far, the Authority has developed the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area and concluded a 15-year exploitation contract with pioneer investors. It is now ready to develop regulations on prospecting and exploration for polymetallic sulphides, cobalt-rich crust, and other resources so as to promote a new round of competition in deep-sea resource exploration and exploitation. According to statistics, by the end of 2004, the Authority had awarded six contracts to pioneer investors for polymetallic nodule resource exploration in the Area, and an additional contract will be awarded in the near future. However, resources in

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the Area are still under exploration, large-scale substantial exploitation has not been initiated, and so there have been few seabed disputes at this stage. Therefore, it is understandable why the Chamber has not yet received any cases concerning seabed disputes.

B. The Chamber Has Huge Potential for Settling Seabed Disputes

As demand for seabed resources rises, new technologies and enhanced exploitation capabilities will lead to an increase in both the scale and frequency of seabed resource exploitation, which in turn will lead to more seabed disputes. Therefore, the huge potential of the Chamber for settling seabed disputes, which is mainly embodied in its compulsory jurisdiction, parties to a case, and applicable law, will be gradually demonstrated by settling more and more relevant cases.

1. Compulsory Jurisdiction

As stipulated under the UNCLOS, the Chamber shall have compulsory jurisdiction over seabed disputes. As provided in Article 287(2) of the UNCLOS, “a declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI, Section 5.” Therefore, the Chamber shall have compulsory jurisdiction over seabed disputes in the Area. According to Article 187 of the UNCLOS, the disputes with respect to activities in the Area include the following:

(1) disputes between States Parties concerning the interpretation or application of this Part and the Annexes in relation thereto;

(2) disputes between a State Party and the Authority concerning: (i) acts or omissions of the Authority or a State Party alleged to be in violation of this Part or the Annexes relating thereto or of rules, regulations and procedures of the Authority adopted in accordance therewith, or (ii) acts of the Authority alleged to be in excess of jurisdiction or a misuse of power;

(3) disputes between parties to a contract, being State Parties, the Authority or the Enterprise, State enterprises and natural or juridical persons, concerning: (i) the interpretation or application of a relevant contract or a plan of work; or (ii) acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests;

(4) disputes between the Authority and a protective contractor concerning the refusal of a contract or a legal issue arising in the negotiation of the contract;
disputes between the Authority and a State Party, a State enterprise or a natural or juridical person sponsored by a State Party, where it is alleged that the Authority has incurred liability; and

(6) any other disputes for which the jurisdiction of the Chamber is specifically provided in this Convention.

Compared with the ITLOS, the compulsory jurisdiction of the ITLOS, flexible as it may be, is subject to statutory and optional exceptions and should more appropriately be referred to as “quasi-compulsory jurisdiction,” while the compulsory jurisdiction of the Chamber is rigid and spared from such exceptions.

Compared with the ICJ, it shall obtain consent by the sovereign State prior to exercising jurisdiction. This important international rule was determined by the Permanent Court of International Justice (PCIJ) as early as 1923. In the Status of Eastern Karelia case, the PCIJ declared that “no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement.” This is also a principle that the ICJ has been following in exercising its jurisdiction.

2. Parties to a Case

Article 37 (Access) of the Statute of the ITLOS provides that the Chamber shall be open to the State Parties, the Authority and the other entities referred to in Part XI, section 5. And according to the provisions of Article 20 (Access to the Tribunal) thereunder, (1) the Tribunal shall be open to State Parties, and (2) the Tribunal shall be open to entities other than States Parties in any case expressly provided for in Part XI or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case. Therefore, parties to a case before the Chamber may include:

- a. State

  The State Parties to the UNCLOS may be parties in cases.

- b. Self-governing Associated States or self-governing Territories

  According to Article 305(1)(c)–(e) of the UNCLOS, self-governing associated States and territories which enjoy full internal self-government may be parties in cases before the ITLOS.

- c. Intergovernmental International Organizations Referred to in Annex IX of the UNCLOS

  According to the provisions in Article 305 of the UNCLOS, it shall be open for signature by international organizations in accordance with Annex IX, which provides that an intergovernmental organization constituted by States to
which its member States have transferred competence over matters governed by the UNCLOS, including the competence to enter into treaties in respect of those matters. An international organization may sign the UNCLOS if a majority of its member States are signatories of the UNCLOS. At the time of signature an international organization shall make a declaration specifying the matters governed by the UNCLOS in respect of which competence has been transferred to that organization by its member States which are signatories, and the nature and extent of that competence. The European Community is a such intergovernmental organization, and juridical practices may be tracked back to 2001 in the Case concerning the Conservation and Sustainable Exploration of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile v. European Union).

d. Authority and Enterprise

The International Seabed Authority and the Enterprise, which are executing institutions established in accordance with the provisions under the UNCLOS, shall be competent to be parties in cases.

e. State Enterprise

The rights and obligations of State enterprises under the international law may be exercised and performed by the State that owns such enterprises.

f. State Sponsoring a Natural or Juridical Person

as a Party to the Dispute

In order to avoid inequality between the parties to a dispute in proceedings arising from the fact that a natural or juridical person is a party to the dispute, Article 190 of the UNCLOS provides for the system of “participation and appearance of sponsoring State Parties in proceedings”: (i) If a natural or juridical person is a party to a dispute, the sponsoring State shall be given notice thereof and shall have the right to participate in the proceeding by submitting written or oral statements, and (ii) If an action is brought against a State Party by a natural or juridical person sponsored by another State Party in a dispute, the respondent State may request the State sponsoring that person to appear in the proceedings on behalf of that person. Failing such appearance, the respondent State may arrange to be represented by a juridical person of its nationality.

By contrast, Article 34(1) of the Statute of the ICJ provides that only States may be parties in cases before the Court.

3. Applicable Law

According to the provisions of Article 38 (Applicable Law) of the Statute of the ITLOS, in addition to the provisions of Article 293, the Chamber shall apply
(i) the rules, regulations and procedures of the Authority adopted in accordance with this Convention and (ii) the terms of contracts concerning activities in the Area in matters relating to those contracts. As provided in Article 293 (Applicable Law) of the UNCLOS, “1. a court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention. 2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case ex aequo et bono, if the parties so agree.” Therefore, the Chamber shall apply; (a) the UNCLOS; (b) other rules of international law not incompatible with the UNCLOS, (c) principle of ex aequo et bono; (d) rules, regulations and procedures of the Authority adopted in accordance with the UNCLOS; and (e) terms of contracts.

Different from the Statute of the ITLOS, Article 38 of the Statute of the ICJ provides that (1) the Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; and (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. (2) This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto. It indicates that the ICJ shall only apply international law.

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