



The Jurisdiction of ITLOS

Judge Zha Hyoung RHEE

2024 Yeosu Academy of the Law of
the Sea, 2024.10.29

IT ALL STARTS WITH JURISDICTION!!!

- Applicant
- Respondent
- Tribunal

IT ALL STARTS WITH JURISDICTION!!!

1. JURISDICTION OF THE TRIBUNAL

1. The Tribunal has jurisdiction to hear the present application under article 287, paragraphs 1 (a) and (4) of the Convention. Luxembourg and Mexico, both parties to the Convention, have made a written declaration under article 287:
 - Rule 54(2) The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Tribunal is said to be based...

**Application of Luxembourg
(The Zheng He case)**

COUNTER-MEMORIAL OF THE KINGDOM OF SPAIN

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**Absence of jurisdiction
in this case**

**Counter Memorial of Spain
(M/V Louisa Case)**

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Jurisdiction

**Judgment of ITLOS
(M/V Virginia G Case)**

WHY DOES IT MATTER?



HOW TO EXPRESS CONSENT?

- Special Agreement
 - transfer from arbitration
- Declaration
 - scope
- Acceptance of Jurisdictional Clause
 - UNCLOS (including residual compulsory jurisdiction)
 - other agreements
- ✕ Forum Prorogatum

HOW DOES IT WORK?

Article 286 Application of procedures under this section

Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to **section 1**, be submitted at the request of any party to the dispute to the court or tribunal having **jurisdiction** under this section.



SCOPE OF JURISDICTION

Ratione Personae, Ratione Materiae

Contentious, Advisory

SCOPE OF JURISDICTION

Article 288 Jurisdiction

1. A court or tribunal referred to in article 287 shall have **jurisdiction** over any **dispute** concerning the interpretation or application of this **Convention** which is submitted to it in accordance with this Part.
2. A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an **international agreement** related to the purposes of this Convention, which is submitted to it in accordance with the agreement.

SCOPE OF JURISDICTION

Article 21 Jurisdiction / Statute

The jurisdiction of the Tribunal comprises **all disputes and all applications** submitted to it in accordance with this Convention

and **all matters** specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

* Article 22

ADVISORY JURISDICTION

Article 191

The **Seabed Disputes Chamber** shall give advisory opinions at the request of the Assembly or the Council on legal questions arising within the scope of their activities.

(para. 89) Thus, article 21 of the Statute and the COSIS Agreement conferring jurisdiction on the Tribunal constitute the substantive legal basis of the advisory jurisdiction of the Tribunal in this case.

Advisory Opinion of 21 May 2024 on Climate Change

EXISTENCE OF A DISPUTE

What is a dispute?

“A disagreement on a point of law or fact, a conflict of legal views or of interests”

Dispute concerning the interpretation and application of the Convention

“...**link** between the **facts** advanced and the **provisions** of the Convention... and show that such provisions can sustain the **claim**...”

DECLARATION

- Choice of Procedure (Art. 287)
- In writing, At any time
- 45/56/170
- General or specific (Difference in Scope)

DECLARATION

“Pursuant to article 287, paragraph 1, the Government of Spain declares that it chooses the International Tribunal for the Law of the Sea and the International Court of Justice as means for the settlement of disputes concerning the interpretation or application of the Convention.”

Spain, 19 July 2002

“In accordance with Article 287, of the 1982 United Nations Convention on the Law of the Sea of 10 December 1982, ... the Government of Saint Vincent and the Grenadines declares that it chooses the International Tribunal for the Law of the Sea established in accordance with Annex VI, as the means of settlement of disputes concerning the arrest or detention of its vessels.”

Saint Vincent and the Grenadine, 22 November 2020

DECLARATION

“in cases where States Parties have made declarations of **differing scope** under Article 287 of the Convention, its jurisdiction exists only to the extent to which the **substance** of the declarations of the two parties to a dispute **coincides**”

M/V ‘Louisa’ Judgment of 28 May 2013, para. 81

DECLARATION

Italy 26 February 1997

“In implementation of article 287 of the United Nations Convention on the Law of the Sea, the Government of Italy has the honour to declare that, for the settlement of disputes concerning the application or interpretation of the Convention and of the Agreement adopted on 28 July 1994 relating to the Implementation of Part XI, it chooses the International Tribunal for the Law of the Sea and the International Court of Justice, without specifying that one has precedence over the other....

**M/V “NORSTAR” (*Panama v. Italy*),
4 November 2016, Judgment, para. 56**

DECLARATION

Panama 29 April 2015

“In accordance with... the Government of the Republic of **Panama declares that it accepts the competence and jurisdiction of the International Tribunal of the Law of the Sea** for the settlement of the dispute between the Government of the Republic of Panama and the Government of the Italian Republic concerning the interpretation or application of UNCLOS that arose from the detention of the Motor Tanker **NORSTAR**, flying the Panamanian flag.”

**M/V “NORSTAR” (*Panama v. Italy*),
4 November 2016, Judgment, para. 57**

SPECIAL AGREEMENTS

Article 24 Institution of Proceedings / Statute

1. Disputes are submitted to the Tribunal, as the case may be, either by **notification of a special agreement** or by written application, addressed to the Registrar....

SPECIAL AGREEMENTS

Transfer from arbitration (8 cases)

- The M/V “SAIGA” (No.2) Case (Saint Vincent and the Grenadines v. Guinea) (1998-1999)
- Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (**Bangladesh/Myanmar**) (2009-2012)
- Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (**Ghana/Côte d'Ivoire**) (2014-2017)
- Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (**Mauritius/Maldives**) (2019-2023)

SPECIAL AGREEMENTS

NOTIFICATION OF SPECIAL AGREEMENT

5

Special Agreement and Notification, 3 December 2014, attached:

- **Minutes of consultations, 3 December 2014**

Special Agreement and Notification

Pursuant to Article 15, paragraph 2, of the Statute of the Tribunal, the Republic of Ghana and the Republic of Côte d'Ivoire hereby record their agreement to submit to a special chamber of International Tribunal for the Law of the Sea the dispute concerning the delimitation of their maritime boundary in the Atlantic Ocean. The agreement was reached on 3 December 2014, under the conditions reflected in the agreed Minutes of Consultation (3 December 2014), attached hereto.

The Republic of Ghana and the Republic of Côte d'Ivoire further record their agreement that the special chamber shall be comprised of the following five individuals:

Judge Boualem Bouguetaia, as President

Judge Rüdiger Wolfrum

Judge Jin-Hyun Paik

Mr Thomas Mensah, Judge *ad hoc* (Ghana)

Judge Ronny Abraham, Judge *ad hoc* (Côte d'Ivoire)

Delivery on today's date of an original of this Agreement and Notification to the Registry of the Tribunal shall constitute the notification contemplated in Article 55 of the Rules of the Tribunal.

Pursuant to Article 56, paragraph 3, of the Rules, the Republic of Ghana and the Republic of Côte d'Ivoire have the honour to notify the Tribunal that the Government of Ghana has appointed H.E. Ms Marietta Brew Appiah-Opong, Attorney General and Minister for Justice, as its Agent and the Government of Côte d'Ivoire has appointed Mr Adama Toungara, Minister of Petroleum and Energy, as its Agent, and Dr Ibrahima Diaby, Director General of Hydrocarbons, Ministry of Petroleum and Energy, as co-Agent, for the purpose of all proceedings in connection with said dispute.

The address for service to which all communications concerning the case are to be sent in accordance with Article 56, paragraph 1, of the Rules are as follows:

For the Government of Ghana:

Embassy of the Republic Ghana
Stavangerstrasse 17-19
10439 Berlin
Germany

Ghana/Côte d'Ivoire

SPECIAL AGREEMENTS

SPECIAL AGREEMENT AND NOTIFICATION

5

Special Agreement and Notification

1. Pursuant to article 15, paragraph 2, of the Statute of the International Tribunal for the Law of the Sea (hereinafter "the Tribunal"), the Republic of Mauritius and the Republic of Maldives hereby record their agreement to submit to a special chamber of the Tribunal the dispute concerning the delimitation of the maritime boundary between them in the Indian Ocean. The agreement was reached on 24 September 2019, under the conditions reflected in the agreed Minutes of Consultations (17 September 2019), attached hereto.

2. The Republic of Mauritius and the Republic of Maldives further record their agreement that the special chamber shall be composed of the following nine individuals:

Judge Jin-Hyun Park, as President
Judge José Luis Jesus
Judge Jean-Pierre Cot
Judge Shunji Yanai
Judge Boualem Bouguetara
Judge Tomas Heider
Judge Neeru Chaudh
Mr Bernard Oxman, Judge ad hoc (Republic of Maldives)
Judge ad hoc to be chosen by the Republic of Mauritius

3. Receipt by the Registry of the Tribunal of the electronic copy of this Agreement and Notification signed by both Parties shall constitute the notification contemplated in article 55 of the Rules of the Tribunal. The date on which the Registry of the Tribunal has received this electronic copy will constitute the date of the institution of proceedings before the Tribunal. The original of the Special Agreement and Notification should be submitted to the Tribunal forthwith.

4. Pursuant to article 55, paragraph 3, of the Rules, the Republic of Mauritius and the Republic of Maldives have the honour to notify the Tribunal that the Government of Mauritius has appointed H.E. Mr Dheerendra Kumar Dabee, G.O.S.K., S.C., Solicitor-General, as its Agent and the Government of Maldives has appointed H.E. Mr Ibrahim Rifath, Attorney General, as its Agent, for the purpose of all proceedings in connection with the said dispute.

5. The address for service to which all communications concerning the case are to be sent in accordance with article 55, paragraph 1, of the Rules is as follows:

For the Government of the Republic of Mauritius:

Embassy of the Republic of Mauritius
2nd Floor, Burggraf Centre
64 Kurfürstenstrasse
10787 Berlin
Germany



Mauritius/Maldives

SPECIAL AGREEMENTS

(para.12) Therefore, in conformity with Article 286, Bangladesh submits its dispute with Myanmar concerning the delimitation of their maritime boundary in the Bay of Bengal to an arbitral tribunal ("Tribunal") constituted in accordance with Annex VII, which has jurisdiction over the dispute in accordance with Article 288(1).

Bangladesh, 08 October 2009

SPECIAL AGREEMENTS

Attachment C

Declaration of the Minister for Foreign Affairs of Myanmar dated
4 November 2009



*Minister for Foreign Affairs
Union of Myanmar*

Nay Pyi Taw
4th November 2009

Declaration under Article 287 of the UNCLOS Accepting the Jurisdiction of the International Tribunal for the Law of the Sea

In accordance with Article 287, paragraph 1, of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the Government of the Union of Myanmar hereby declares that it accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of dispute between the Union of Myanmar and the People's Republic of Bangladesh relating to the delimitation of maritime boundary between the two countries in the Bay of Bengal.

Respectfully submitted,

(Nyan Win)
Minister for Foreign Affairs
Government of the Union of Myanmar

Attachment D

Declaration of the Minister for Foreign Affairs of Bangladesh dated
12 December 2009

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



পররাষ্ট্র মন্ত্রী
FOREIGN MINISTER

GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF BANGLADESH
DHAKA

12 December 2009

DECLARATION UNDER ARTICLE 287(1) OF UNCLOS ACCEPTING THE JURISDICTION OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Pursuant to Article 287, paragraph 1, of the 1982 United Nations Convention on the Law of the Sea, the Government of the People's Republic of Bangladesh declares that it accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of the dispute between the People's Republic of Bangladesh and the Union of Myanmar relating to the delimitation of their maritime boundary in the Bay of Bengal.

Dr. Dipu Moni, MP
Minister for Foreign Affairs
Government of the People's Republic of
Bangladesh

² Note by the Registry: This document does not relate to the present dispute.

FORUM PROROGATUM

ITLOS Rules Article 54

5. When the applicant proposes to found the jurisdiction of the Tribunal upon a **consent** thereto **yet to be given** or manifested by the party against which the application is made, the application shall be transmitted to that party. It shall not however be entered in the List of cases, nor any action be taken in the proceedings, **unless and until** the party against which such application is made **consents to the jurisdiction** of the Tribunal for the purposes of the case.

JURISDICTIONAL CLAUSES



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International Agreements Conferring Jurisdiction on the Tribunal

The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with the Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal. Below is a list of international agreements containing provisions relating to the jurisdiction of the International Tribunal for the Law of the Sea. The list is not necessarily exhaustive.

(A) Multilateral Agreements

- ✓ Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas
- ✓ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
- ✓ 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972
- ✓ Framework Agreement for the Conservation of the Living Marine Resources on the High Seas of the South-Eastern Pacific ("Galapagos Agreement"), 14 August 2000
- ✓ Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
- ✓ Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean
- ✓ Convention on the Protection of the Underwater Cultural Heritage

JURISDICTIONAL CLAUSES

UN Fish Stocks Agreement (UN FSA)

Article 30 Procedures for the settlement of disputes

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of **this Agreement**, whether or not they are also Parties to the Convention.

2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of a **subregional, regional or global fisheries agreement** relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.

JURISDICTIONAL CLAUSES

BBNJ Agreement

Article 60 Procedures for the settlement of disputes

1. Disputes concerning the interpretation or application of this Agreement shall be settled **in accordance with the provisions** for the settlement of disputes provided for **in Part XV** of the Convention.
2. The provisions of Part XV of and Annexes V, VI, VII and VIII to the Convention shall be **deemed to be replicated** for the purpose of the settlement of disputes involving a Party to this Agreement that is not a Party to the Convention

RESIDUAL COMPULSORY JURISDICTION

Article 290(5) Provisional Measures

5. Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, 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 **International Tribunal for the Law of the Sea** or, with respect to activities in the Area, the Seabed Disputes Chamber, **may prescribe**, modify or revoke **provisional measures** in accordance with this article if it considers that prima facie the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires...

RESIDUAL COMPULSORY JURISDICTION

Article 292(1) Prompt release of vessels and crews

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention **for the prompt release of the vessel or its crew** upon the posting of a reasonable bond or other financial security, the question of release from detention may be **submitted** to any court or tribunal agreed upon by the parties or, **failing such agreement** within 10 days from the time of detention, to **a court or tribunal accepted by the detaining State** under article 287 or to the International Tribunal for the Law of the Sea, **unless the parties otherwise agree.**

PREREQUISITES (SECTION 1)

Article 281 Procedure where no settlement has been reached by the parties

1. If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed to seek settlement of the dispute by a peaceful means of their own choice, the procedures provided for in this Part apply **only** where **no settlement has been reached by recourse to such means** and the agreement between the parties does **not exclude any further procedure**.

SOUTHERN BLUEFIN TUNA CASE (PM 1999)



PREREQUISITES (SECTION 1)

Article 282 Obligations under general, regional or bilateral agreements

If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a **procedure that entails a binding decision**, that procedure shall apply **in lieu of the procedures** provided for in this Part, unless the parties to the dispute otherwise agree.

MOX PLANT CASE (PM, 2001)



PREREQUISITES (SECTION 1)

Article 283 Obligation to exchange views

1. When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall **proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.**

LIMITATIONS AND EXCEPTIONS (SECTION 3)

Automatic limitations (Article 297)

- MSR in EEZ or CS
- Certain EEZ Fisheries

- TAC_{관력}

⊗ Compulsory Conciliation

LIMITATIONS AND EXCEPTIONS (SECTION 3)

Optional exceptions (Article 298)

- At any time, in writing
- Three types of disputes
 1. Maritime Boundary Delimitation / Historic Bays or Titles
 2. Military Activities / Law Enforcement Activities
 3. Functioning by UNSC
- 44 Declarations

ARCTIC SUNRISE CASE



The declaration made by the Russian Federation with respect to law enforcement activities under article 298, paragraph 1(b), of the Convention *prima facie* applies **only** to disputes excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3, of the Convention, namely with respect to **fishery or scientific activities in the EEZ**.

DETENTION OF UKRAINIAN VESSELS CASE



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**Thank you for your kind
attention and incredible
patience!**