A CRITICAL ANALYSIS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS) IN RESOLVING MARITIME DISPUTES

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This is to certify that Ms. Hafsa M M, Reg. No. LM0224009 has submitted his Dissertation titled "**A CRITICAL ANALYSIS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS) IN RESOLVING MARITIME DISPUTES"** in partial fulfilment of the requirement for the award of Degree "Master of Laws in International Trade Law" to The National University of Advanced Legal Studies, Kochi under my guidance and supervision. It is also affirmed that, the dissertation submitted by him is bona-fide and genuine.

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DECLARATION

I, Hafsa M M, do hereby declare that this LL.M. Dissertation titled **"A CRITICAL ANALYSIS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS) IN RESOLVING MARITIME DISPUTES",** researched and submitted by me to the National University of Advanced Legal Studies, Kochi in partial fulfillment of the requirement for the award of Degree "Master of Laws in International Trade Law", under the guidance and supervision of Dr. Aparna Sreekumar, is an original, bona-fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University of any other University.

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PREFACE

The seas have always been the arteries of global commerce, carrying the bulk of the world's trade on routes that weave across every continent. Yet beneath the sails, containers, and tankers lies a complex web of legal norms and institutions tasked with keeping those arteries open, predictable, and peaceful. It was against this backdrop of vital commercial exchange and the contentious encounters it can provoke that I undertook this study of the International Tribunal for the Law of the Sea (ITLOS).

Maritime disputes touch directly on the flow of goods: delimitation of ocean boundaries determines exclusive fishing or mineral rights; challenges over vessel detention affect shipping schedules; environmental orders shape coastal projects that support ports and harbours. By critically analysing ITLOS's jurisdiction, procedures, and landmark decisions—from provisional measures in the Southern Bluefin Tuna and MOX Plant cases to boundary delimitations in the Bay of Bengal—I have sought to map how this specialised tribunal both facilitates and constrains the law of the sea in service of orderly trade.

This dissertation is structured to trace that journey: Chapter 1 lays out the legal framework of UNCLOS and the emergence of ITLOS; Chapter 2 dissects the Tribunal's institutional design; Chapter 3 evaluates its role in balancing maritime rights with environmental protection; Chapter 4 explores political and economic power dynamics that influence compliance; and Chapter 5 compares ITLOS with other dispute-settlement fora before drawing policy recommendations in Chapter 6.

In an era of shifting power balances and pressing challenges—climate impacts on shipping lanes, deep-sea resource contests, and emerging digital commerce at sea—understanding ITLOS's capacity to deliver fair, binding, and timely rulings is more than academic. It is a matter of ensuring that ocean governance continues to underpin the stable, sustainable exchange of goods upon which billions depend.

ABBREVIATIONS

- BBNJ - Marine Biodiversity in Areas Beyond National Jurisdiction
- COSISIL - Committee of Small Island States on Climate Change and Int'l Law
- EEZ - Exclusive Economic Zone
- EIA - Environmental Impact Assessment
- GHG - Greenhouse Gas
- ICJ - International Court of Justice
- ISA - International Seabed Authority
- ITLOS - International Tribunal for the Law of the Sea
- MPA - Marine Protected Area
- PCIJ - Permanent Court of International Justice
- SBT - Southern Bluefin Tuna
- SDC - Seabed Disputes Chamber
- UNCLOS - United Nations Convention on the Law of the Sea

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CHAPTER 1
INTRODUCTION

1.1 BACKGROUND

The oceans covers over 70% of the Earth's surface. They are vital to global trade, environmental health, and geopolitical stability. Maritime disputes are a more recent phenomenon than territorial disputes. This is because the configuration of a coastline and definition of maritime features determine maritime boundaries. Furthermore maritime disputes evolve as states expand their maritime claims.[1] Recognizing the need for a comprehensive legal framework to govern maritime activities, the international community adopted the United Nations Convention on the Law of the Sea (UNCLOS) in 1982.[2] UNCLOS establishes a comprehensive legal framework governing all ocean space and uses of marine resources[3]. Contained in Part XV and its Annexes are comprehensive and flexible dispute settlement mechanisms addressing all facets of marine policy and ocean governance. These range from non-binding diplomatic methods such as negotiations, mediation, and conciliation to binding adjudicative procedures involving tribunals like the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), and arbitration panels, including special arbitration. Additionally, the Seabed Disputes Chamber within ITLOS may issue advisory opinions upon request by the Seabed Authority's Assembly or Council, offering further legal clarity on complex issues.[4]

A distinctive feature of UNCLOS is its compulsory binding dispute settlement mechanism, which allows any state party to unilaterally initiate proceedings against another state party concerning the interpretation or application of the Convention. To address disputes concerning its interpretation and application, the United Nations

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[1] *EMILIA JUSTYNA POWELL & KRISTA E. WIEGAND, THE PEACEFUL RESOLUTION OF TERRITORIAL AND MARITIME DISPUTES* (Oxford Univ. Press 2023).

[2] United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, 1833 U.N.T.S. 3; 21 I.L.M. 1261 (1982).

[3] Ministère de l'Europe et des Affaires Étrangères, *International Tribunal for the Law of the Sea*, France Diplomacy, (May 21, 2025) https://www.diplomatie.gouv.fr/en/french-foreign-policy/international-justice/international-tribunal-for-the-law/.

[4] RAHMATULLAH KHAN, *Introduction*, in THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA: LAW, PRACTICE AND PROCEDURE 13 (P. Chandrasekhara Rao & Rahmatullah Khan eds., 2001).

Convention on the Law of the Sea (UNCLOS) offers States Parties a choice among four distinct dispute resolution mechanisms:

1. **International Tribunal for the Law of the Sea (ITLOS):** Established under Annex VI of UNCLOS, ITLOS is a specialized judicial body dedicated to adjudicating maritime disputes arising from the Convention.
2. **International Court of Justice (ICJ):** As the principal judicial organ of the United Nations, the ICJ is competent to hear cases related to the interpretation and application of UNCLOS, provided the disputing states have accepted its jurisdiction.
3. **Arbitration in accordance with Annex VII of the Convention:** This mechanism involves the constitution of an arbitral tribunal to resolve disputes, offering a flexible and binding resolution process tailored to the specific needs of the parties involved.
4. **Special Arbitration pursuant to Annex VIII of the Convention:** Special arbitration is designed to address disputes concerning technical matters, such as fisheries, marine environment protection, marine scientific research, and navigation, by involving experts in the relevant fields.

States Parties are free to choose, through a written declaration, one or more of these means for the settlement of disputes concerning the interpretation or application of UNCLOS. If they have not accepted the same procedure, the dispute may be submitted only to Annex VII arbitration, unless otherwise agreed.[5] This "smorgasbord" of compulsory settlement procedures strikes a balance between views advocating greater coastal-State autonomy and those seeking to limit such "sovereign rights," while ensuring inclusive community interests. Articles 297 and 298 distinguish disputes over coastal-State jurisdiction from those involving broader community values—and compel recourse to non-binding methods like conciliation as a preliminary step, "bringing the traditional conciliation a modest step closer to the compulsory procedure."[6]

The International Tribunal for the Law of the Sea (ITLOS), established under the United Nations Convention on the Law of the Sea (UNCLOS), which came into force in 1994, is one of the primary bodies tasked with adjudicating maritime disputes. The

[5] Article 281 UNCLOS
[6] Rahmatulla Khan , 2001, supra 4.

Tribunal has two important functions: first, it settles peacefully disputes concerning the interpretation and application of the Convention; second, in so doing it clarifies and develops international law. The tribunal is composed of 21 independent judges elected by states parties to UNCLOS, representing a diverse range of legal systems and geographical regions. This ensures that the tribunal's decisions are based on a broad and impartial perspective, enhancing its credibility and legitimacy as a judicial institution. Under article 21 of its Statute, ITLOS hears all disputes submitted under UNCLOS and, importantly, those arising under any other agreement if that agreement so specifies—rendering its ratione personae jurisdiction more inclusive than that of the ICJ.[7]

ITLOS has jurisdiction over a wide range of maritime disputes, including those concerning the delimitation of maritime boundaries, fisheries management, protection of the marine environment, and navigation rights. By granting access to non-State entities—private companies, intergovernmental organisations, even NGOs—ITLOS "breaks new ground," subjecting them to legal restraint when their activities impact ocean resources.[8] Its decisions are binding on the parties involved and are aimed at promoting the peaceful resolution of disputes through dialogue and legal means.

The effectiveness of ITLOS is crucial for maintaining peace and stability in the world's oceans and promoting the rule of law in maritime affairs. However, the tribunal's ability to ensure compliance with its rulings and its efficiency in resolving disputes have been subjects of debate. This research aims to analyze the various dispute resolution mechanisms in maritime law and seeks to assess the effectiveness of ITLOS in resolving these disputes, particularly in light of evolving challenges and the tribunal's interaction with other international bodies.

1.2 RESEARCH QUESTION

1. What are the strengths and limitations of ITLOS compared to other dispute resolution mechanisms in terms of jurisdiction, procedural efficiency, enforceability, and adaptability to emerging maritime challenges?

2. How do political and economic power differences influence state compliance with ITLOS rulings?

[7] Rahmatulla Khan, 2001, supra 4.
[8] *Id.*

3. How well does ITLOS balance maritime rights with environmental protection?

4. How is ITLOS addressing emerging maritime challenges like climate change and deep-sea mining?

1.3 RATIONALE AND SIGNIFICANCE OF THE STUDY

This research is highly relevant given the growing complexity of maritime disputes in an interconnected world. Political tensions, economic stakes, and environmental concerns often intersect in maritime disputes, making them a focal point of international relations and legal debates. Assessing ITLOS's effectiveness provides valuable insights into the strengths and limitations of the current legal framework governing ocean affairs.

UNCLOS provides states the discretion to choose between the legal framework i.e, ITLOS, ICJ, arbitration and special arbitration to resolve the maritime disputes. This flexibility raises critical questions about why states opt for one mechanism over another? why do some states propose means to resolve their disputes using bilateral negotiations, while others are willing to take their case to the ICJ or an arbitration tribunal? Do states have a priori preferences about settlement mechanisms or are all of these methods deemed to be equally attractive as long as they yield out a preferred outcome? and What factors shape proposer states' choices. By understanding ITLOS's strengths and limitations, this research will contribute to more effective maritime dispute resolution by providing clarity on which subject matters ITLOS is best equipped to handle. This analysis will enable states and legal practitioners to make more informed decisions about when and why to choose ITLOS for specific types of maritime disputes, such as those involving marine resource exploitation, maritime boundaries, and environmental concerns.

This study will address gaps in existing literature, particularly in areas like compliance, enforcement, and emerging challenges such as climate change and deep-sea mining. It will also guide the tribunal's processes, precedents, and interaction with other international dispute resolution bodies.

1.4 SCOPE AND DELIMITATION

This study focuses specifically on the functioning of ITLOS in resolving maritime disputes, particularly in relation to the jurisdictional, procedural, and substantive aspects under the UNCLOS.

The study will assess ITLOS's effectiveness, case resolution speed, state compliance rates, and the long-term impact of its decisions on the development of maritime law.

The research will be limited to examining published case law, scholarly articles, and legal documents, excluding empirical research on state behavior and perspectives on ITLOS's decisions.

Furthermore, the study will not delve into broader geopolitical or socio-economic issues that may influence the overall acceptance or effectiveness of ITLOS, focusing instead on legal principles and procedural matters within its jurisdiction.

1.5 THEORETICAL FRAMEWORK AND LITERATURE REVIEW

The Brill volume *The International Tribunal for the Law of the Sea: Law and Practice* (2022), edited by P. Chandrasekhara Rao and Rahmatullah Khan, offers an authoritative, insiders' account of ITLOS. Drawing on contributions by sitting judges, the chapters of the book systematically cover ITLOS's institutional context within UNCLOS, its relationship to the broader UNCLOS dispute-settlement system, and the Tribunal's own features. It also crucially analyzes the Tribunal's jurisdiction, its procedures in all modes of cases (contentious cases, provisional measures, prompt release, special/arbitrary cases, advisory opinions), the Internal Judicial Practice and the Tribunal's Rules. Because the authors are senior ITLOS members, the book provides a practical, insider perspective on how cases are prepared and heard. For example, it explains the Tribunal's expedited treatment of urgent cases (prompt release and provisional measures) and its guidance on filing claims. In sum, this volume's contribution is to document and analyze ITLOS's jurisdictional scope, institutional structure, and procedural innovations, while situating the Tribunal within UNCLOS's "smorgasbord" of compulsory dispute-resolution options.[9]

[9] P. CHANDRASEKHARA RAO & RAHMATULLAH KHAN, EDS., *THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA: LAW AND PRACTICE* (Brill/Nijhoff 2022)

P. Chandrasekhara Rao and Philippe Gautier's book *The International Tribunal for the Law of the Sea: Law, Practice and Procedure* (Elgar 2018) complements the above by offering an insider's insight into the composition, jurisdiction, rule of procedure, and judicial operations of ITLOS based on the authors' first-hand practical experience with the Tribunal—Rao as its former President and Gautier as Registrar.[10]

The effectiveness of dispute resolution mechanisms under the United Nations Convention on the Law of the Sea (UNCLOS) has been a focal point of scholarly analysis, with significant attention given to the International Tribunal for the Law of the Sea (ITLOS). Natalie Klein's work, *The Effectiveness of the UNCLOS Dispute Settlement Regime*, provides a foundational understanding of the framework's strengths and limitations. Klein underscores the value of UNCLOS offering multiple mechanisms—such as ITLOS, arbitration, and the International Court of Justice (ICJ)—to accommodate diverse state preferences. However, she critiques the regime's effectiveness in terms of enforceability, accessibility, and state willingness to engage with binding dispute resolution mechanisms. Her analysis lays a comparative baseline for evaluating ITLOS's specific contributions to international maritime law.[11]

Philippe Gautier, in his essay *The ITLOS Experience in Dispute Resolution*, examines the tribunal's performance in resolving maritime disputes. He emphasizes ITLOS's significant contributions to clarifying international maritime law through its judgments and advisory opinions. Gautier highlights ITLOS's procedural innovations, particularly its ability to address urgent matters, such as through provisional measures. Furthermore, he acknowledges the tribunal's balance between adhering to legal principles and addressing practical concerns in maritime conflicts. Gautier's work is pivotal in understanding how ITLOS has shaped the interpretation of UNCLOS provisions and contributed to the evolution of maritime jurisprudence.

Ravin, in *ITLOS and Dispute Settlement Mechanisms of UNCLOS*, provides a comparative analysis of ITLOS within the broader UNCLOS framework, particularly its interaction with arbitration and ICJ proceedings. Ravin highlights ITLOS's specialization in maritime law and its expedited procedures, which make it a unique

[10] P.C. RAO & P. GAUTIER, THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA: LAW, PRACTICE AND PROCEDURE (2018).
[11] Natalie Klein, The Effectiveness of the UNCLOS Dispute Settlement Regime: Reaching for the Stars?, 108 Proc. Ann. Meeting (Am. Soc'y Int'l L.) 359 (2014).

forum for resolving disputes. However, he notes the political sensitivities that often deter states from pursuing binding resolutions through ITLOS. His analysis enriches discussions on ITLOS's procedural strengths and limitations, particularly in securing state compliance and navigating geopolitical considerations.[12]

Similarly, Bangaru Laxmi Jasti's study, *Intricate Dispute Settlement System of the Law of the Sea,* explores why states often prefer arbitration over ITLOS or other mechanisms. Jasti identifies arbitration as a more flexible and state-preferred mechanism, particularly for disputes involving politically or strategically sensitive issues. In contrast, she critiques ITLOS's treaty-bound and structured framework as potentially restrictive for states with broader interests. This perspective is critical for evaluating ITLOS's usage relative to arbitration and provides insights into the tribunal's limitations in attracting cases.[13]

Emerging themes from the literature reflect a nuanced understanding of ITLOS's role within the UNCLOS framework. Scholars agree that ITLOS boasts procedural innovations, jurisdictional clarity, and expertise in maritime law, which enhance its potential as a dispute resolution mechanism. However, practical challenges, such as state reluctance to engage and enforcement issues, hinder its effectiveness. Additionally, the literature highlights the preference for arbitration due to its flexibility and confidentiality, which contrasts with ITLOS's public and structured proceedings. Finally, there is a consensus that ITLOS is well-positioned to address emerging maritime issues, such as environmental protection and climate change, although its jurisprudence in these areas remains limited.

1.6 RESEARCH OBJECTIVES

1. To critically assess the institutional capacity of ITLOS to function as an effective and specialized maritime dispute resolution forum under UNCLOS.
2. To identify and evaluate the procedural and jurisdictional advantages ITLOS offers in comparison to other dispute resolution mechanisms such as the ICJ, Annex VII arbitration, and Annex VIII special arbitration.

[12] M.O.M. Ravin**,** ITLOS and Dispute Settlement Mechanisms of the United Nations Convention on the Law of the Sea (United Nations–The Nippon Foundation Fellowship Program, Mar.–Dec. 2005).
[13] Bangaru Laxmi Jasti, Intricate Dispute Settlement System of the Law of the Sea: Do the States Prefer Arbitration over Other Fora?, 1 Indian J. Def. & Mar. L. 199 (2021).

3. To analyze how ITLOS's decisions contribute to the progressive development of international maritime law, particularly in cases involving environmental protection and marine resource management.
4. To examine the practical challenges ITLOS faces in securing state compliance, including how political and economic asymmetries affect implementation of its rulings.
5. To explore the extent to which ITLOS is equipped to address new and evolving maritime challenges, such as climate change, deep-sea mining, and advisory jurisdiction expansion.

1.7 HYPOTHESIS

The International Tribunal for the Law of the Sea (ITLOS) effectively contributes to resolving maritime disputes and balancing environmental protection with maritime rights compared to other fora, such as arbitration and ICJ but remains limited in scope due to jurisdictional constraints and state compliance.

1.8 RESEARCH METHODOLOGY

This study will adopt a doctrinal research methodology analysing the primary sources such as key ITLOS judgments, provisions of UNCLOS, and relevant international treaties.

Landmark cases adjudicated by ITLOS will be analyzed to assess its procedural efficiency, jurisdictional reach, and impact on international maritime relations.

This study will also include a Comparitive Analysis by comparing ITLOS's effectiveness other ADR mechanisms, and other judicial bodies like the PCA and the ICJ, to evaluate their relative effectiveness in maritime disputes.

1.9 STRUCTURE OF THE DISSERTATION

Chapter 1: Introduction

This chapter establishes the context and significance of the International Tribunal for the Law of the Sea (ITLOS) within the broader UNCLOS dispute-resolution regime. This chapter also depicts the scope of the study, objectives, hypothesis, research questions and literature review.

Chapter 2: Jurisdiction and Procedural Mechanisms of ITLOS

This chapter maps ITLOS's jurisdiction 'ratione personae' (who may bring and defend cases) and 'ratione materiae' (which UNCLOS issues it can decide, including provisional measures and prompt release) and explains the "cafeteria" approach of Article 287 declarations and Article 298 opt-outs. The chapter also describes the Tribunal's institutional structure, and key procedural rules to understand how the tribunal organizes and conducts maritime disputes.

Chapter 3: ITLOS and the balance between maritime rights and environmental protection.

This chapter evaluates how ITLOS's contribution in reconciling coastal-State entitlements and navigation rights with UNCLOS's marine-environment obligations. It analyzes key ITLOS decisions—such as the Southern Bluefin Tuna, MOX Plant, The Land Reclamation Case to assess whether ITLOS provides a fair and sustainable balance while promoting international environmental governance.

Chapter 4: Impact of political and economic power dynamics on state compliance with ITLOS rulings.

This chapter explores how power asymmetries among states influence compliance with ITLOS decisions. Drawing on case studies involving both smaller parties (e.g., the M/V Saiga prompt-release case; Bangladesh–Myanmar delimitation) and major powers (e.g., Russia in the Arctic Sunrise incident; China's non-participation in the South China Sea arbitration), it explores the limits of ITLOS's moral and legal authority.

Chapter 5: Comparative analysis of ITLOS and other international maritime dispute resolution bodies.

This chapter conducts a systematic comparison of ITLOS with UNCLOS dispute-settlement fora: the International Court of Justice, Annex VII ad hoc arbitration, Annex VIII special arbitration, and non-binding diplomatic means. It focuses on their jurisdiction, procedural efficiency, enforcement mechanisms, and suitability for maritime disputes. The chapter highlights the unique role of ITLOS while addressing areas where it overlaps or diverges from other forums.

Chapter 6: Conclusion and Recommendations

The final chapter synthesizes the findings of the study, offering conclusions on the effectiveness of ITLOS in resolving maritime disputes. It provides practical recommendations to enhance ITLOS's role and how India can make use of this dispute resolution mechanism.

CHAPTER 2
JURISDICTION AND PROCEDURAL MECHANISMS OF ITLOS

2.1 INTRODUCTION

The International Tribunal for the Law of the Sea (ITLOS) emerged as a significant legal institution under the framework of the United Nations Convention on the Law of the Sea (UNCLOS). The origins of ITLOS can be traced back to the Third United Nations Conference on the Law of the Sea (UNCLOS III), which took place between 1973 and 1982. This conference sought to establish a comprehensive legal order for the oceans, addressing issues such as territorial waters, exclusive economic zones (EEZs), continental shelf rights, and deep-sea mining. The Convention was signed in Montego Bay, Jamaica, on 10 December 1982 and entered into force on 16 November 1994. To facilitate the implementation of Part XI of the Convention, a subsequent agreement was adopted on 28 July 1994, entering into force on 28 July 1996. These instruments are interpreted and applied together as a single framework for ocean governance. The Convention plays a crucial role in maintaining international peace and security while promoting sustainable use of marine resources. It also establishes the International Seabed Authority, which is responsible for administering resources beyond national jurisdiction in the Area, recognized as the common heritage of humankind. Furthermore, Part XV of the Convention, read together with Annex VI, provides the legal foundation for the establishment and jurisdiction of ITLOS[14].

The necessity for a specialized maritime dispute resolution mechanism became evident as disputes over maritime boundaries, fishing rights, and environmental protection grew in complexity and frequency. While existing forums such as the International Court of Justice (ICJ) and arbitral tribunals under UNCLOS were available for resolving such disputes, they lacked the specialized focus required for the multifaceted nature of maritime law. Recognizing this gap, the drafters of UNCLOS included provisions for

[14] P.C. RAO & P. GAUTIER, THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA: LAW, PRACTICE AND PROCEDURE (2018).

the establishment of ITLOS, a dedicated judicial body for interpreting and applying the Convention.

ITLOS, formally established with UNCLOS's entry into force in 1994, was designed to provide a more structured and authoritative platform for adjudicating maritime disputes while ensuring consistency in the application of international maritime law. It is headquartered in Hamburg, Germany, and consists of 21 judges elected by the States Parties to UNCLOS. The Tribunal delivered its first judgement in the M/V Saiga case. Since then, the court has delivered 33 judgements and provisional measures[15]. The Tribunal plays a crucial role in resolving disputes involving the interpretation and application of maritime law, ensuring compliance with UNCLOS provisions, and fostering legal certainty in ocean governance.

2.2 ITLOS'S JURISDICTION UNDER UNCLOS

The jurisdiction of the International Tribunal for the Law of the Sea (ITLOS) is primarily established under the United Nations Convention on the Law of the Sea (UNCLOS). The Convention has adopted what is known as the 'Montreaux formula' or cafeteria approach'[16], with four possible compulsory procedures (including ITLOS) that envisage binding decisions in case of disputes concerning the interpretation or application of the convention. Article 287 of UNCLOS provides that ITLOS is one of the four binding mechanisms available for the settlement of disputes concerning the interpretation or application of the Convention, alongside the International Court of Justice (ICJ), arbitral tribunals under Annex VII, and special arbitration under Annex VIII. The choice of the particular procedure depends on the declarations deposited by states at the time of acceding to the convention or at any time thereafter.[17] If the parties to a dispute have not selected the same type of procedure, the default one will be arbitration under Annex VII, rather than resort to ITLOS.[18]

[15] The most recent being "Zheng He" (Luxembourg v. Mexico), Provisional Measures, Order of 8 August 2024, (2024) ITLOS Reports 282.
[16] AO Adede, The basic structure of the dispute settlement part of the law of the sea convention 11 OCEANDEVINTLL 125, 130-32 (1982).
[17] UNCLOS Art 287(1).
[18] UNCLOS Art 287(5). However, parties can decide otherwise. In fact, some cases were instituted unilaterally under this provision and then transferred to the Tribunal.

2.2.1 jurisdiction ratione personae

The jurisdiction ratione personae relates to the questions "who may become parties to a case before the Tribunal or who may have access to the Tribunal?".

Article 291 of UNCLOS, along with Articles 20 and 37 of the ITLOS Statute, defines the categories of entities with access to ITLOS. Unlike the International Court of Justice (ICJ), which limits participation to States, ITLOS allows access to a broader range of entities. Article 291 of UNCLOS declares dispute settlement procedures open to States Parties, but it also extends access to entities other than States, as outlined in Article 305(1)(b)-(f) of UNCLOS, including international organizations with competence over maritime matters, such as the European Union and Cook Island[19]. Additionally, Article 20(2) of the ITLOS Statute specifies that the Tribunal is open to entities beyond States Parties in cases expressly provided for in Part XI of UNCLOS. The Seabed Disputes Chamber (SDC), in particular, has jurisdiction over disputes involving the International Seabed Authority, the Enterprise, state enterprises, and natural or juridical persons engaged in seabed mining, as specified in Article 187 of UNCLOS.

However, even when private entities have access to ITLOS, their participation is subject to limitations, such as the requirement that they be sponsored by a State Party. This aspect, while a significant procedural development in international law, also reflects the continued dominance of States in international adjudication. The jurisdiction ratione personae of ITLOS thus represents a unique evolution in procedural international law, extending access beyond States while maintaining a role for State sponsorship and oversight.[20]

2.2.2 Jurisdiction Ratione Materiae

The jurisdiction ratione materiae relates to the subject matter of the dispute which could be brought before the Court or the Tribunal. The jurisdiction ratione materiae of the for a is set out in article 288 of the Convention. ITLOS has jurisdiction over disputes concerning the interpretation or application of UNCLOS and related international agreements. This is very broad: it ranges from maritime delimitation, navigation rights,

[19] Rao & Gautier, *supra* 14, at 85
[20] Id.

fishing rights, to environmental obligations, etc., so long as the dispute arises under UNCLOS or any related international agreement in accordance with Article 288(2). With respect to the Tribunal's jurisdiction, the Convention is supplemented by section 2 of the Statute of the Tribunal[21] (entitled "Competence") in particular Articles 21 (Jurisdiction) and 22 (Reference of disputes subject to other agreements) deal directly with jurisdiction ratione materiae. In addition, such a dispute must not be excluded from the Tribunal's jurisdiction by the limitations and exceptions contained in Articles 297 and 298 of the Convention. The Tribunal has jurisdiction over disputes under the Convention "submitted to it in accordance with [the] Convention."[22]. Accordingly, the basis on which States Parties may consent to the Tribunal's jurisdiction under Part XV of the Convention is examined.[23]

There are a few narrow exceptions carved out by the Convention. For example, under Article 298 many military activities and boundary delimited matters are excluded from compulsory adjudication; and Article 297(1) explicitly bars compulsory dispute settlement for certain fisheries and marine scientific research disputes in archipelagic and enclosed seas. Within its broadly defined jurisdiction, ITLOS can also exercise "incidental" jurisdiction. For example, where a dispute is already before an ITLOS chamber on one issue, the Tribunal can decide any closely linked issue as part of the same proceedings (e.g. deciding an arrest of a vessel as incidental to a maritime boundary dispute).

According to Article 287 of UNCLOS, ITLOS is one of four mechanisms offering "compulsory procedures entailing binding decisions" for the settlement of disputes concerning the interpretation or application of the Convention. Every State Party to UNCLOS has the option to select one or more of these dispute resolution mechanisms for cases in which it may be involved. But when ITLOS is chosen or otherwise compulsory (as in provisional-measure or prompt-release scenarios), it functions as an international judicial forum for States. Jurisdiction recognized by the Tribunal is binding and is not subject to the consent of the States Parties.

[21] Statute of the International Tribunal for the Law of the Sea, Annex VI, Dec. 10, 1982, 1833 U.N.T.S. 561.
[22] Statute art. 21; see also art. 288 para. 1 of the convention
[23] Rao & Gautier, *supra* 14, at 78-79

There are, however, exceptions where ITLOS has jurisdiction without requiring prior acceptance by all parties. These include:

a. Disputes brought before the Seabed Disputes Chamber concerning activities in the Area, as specified in Article 187 of UNCLOS;

b. Requests for the Tribunal or the Seabed Disputes Chamber to prescribe provisional measures under Article 290(5) of the Convention;

c. Applications for the Tribunal to order the prompt release of detained vessels or their crew under Article 292 of the Convention.

These compulsory jurisdictions distinguish ITLOS from the other procedures outlined in Article 287, granting the Tribunal unique competences within the international dispute resolution framework.[24] Additionally, ITLOS has advisory, optional, and accessory jurisdictions, further reinforcing its role as a specialized judicial body for maritime disputes.

2.3 TYPES OF DISPUTES ITLOS ADJUDICATED

Since its establishment, the International Tribunal for the Law of the Sea (ITLOS) has played a crucial role in adjudicating over 30 cases concerning various aspects of maritime law under the United Nations Convention on the Law of the Sea (UNCLOS). One of ITLOS's key functions is ensuring the prompt release of vessels and crews detained by coastal states under Article 292. Notable cases include *The M/V "Saiga" Case (No. 2)* (1999)[25], which reinforced ITLOS's authority in securing vessel releases. This was followed by similar cases such as *The Camouco Case* (2000), *Monte Confurco Case* (2000), *Grand Prince Case* (2001), *Volga Case* (2002), and the recent *M/T "Heroic Idun" Case* (2022)[26], all of which contributed to strengthening the tribunal's jurisprudence on prompt release matters.

[24] Mensah, T. A, *The peaceful Settlement of Disputes,* In THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA: LAW AND PRACTICE 27 (P. C. Rao, & R. Khan eds., 2001).
[25] The "Saiga" Case (Saint Vincent and the Grenadines v. Guinea) Provisional Measures, (1998) ITLOS Reports 24.
[26] Camouco Case (Panama v. France) Prompt release,(2000) 39 ILM 666; Monte Confurco Case (Seychelles v. France), Prompt release, Case No. 16,(2000) ITLOS Reports 86; Grand Prince" (Belize v. France), Prompt Release, (2001) ITLOS Reports 1; Volga" (Russian Federation v. Australia), Prompt Release,(2002) ITLOS Reports 10; M/T "Heroic Idun" (Marshall Islands v. Equatorial Guinea), Order of 11 November 2022, (2022–2023) ITLOS Reports 178.

ITLOS has also exercised its jurisdiction under Article 290 to prescribe provisional measures, particularly in cases concerning environmental protection and sovereign immunity. The *Southern Bluefin Tuna Cases* (1999)[27] set an important precedent for applying the precautionary principle in international fisheries management, while the *MOX Plant Case* (2001)[28] addressed transboundary environmental concerns between Ireland and the United Kingdom. Other significant provisional measures cases include *Land Reclamation by Singapore in and around the Straits of Johor* (2003)[29], which dealt with environmental disputes, *The "Arctic Sunrise" Case* (2013)[30], concerning Russia's detention of a Greenpeace vessel, and *The Enrica Lexie Incident* (2015)[31], which involved a dispute between Italy and India regarding the arrest of Italian marines.

Maritime boundary delimitation has been another area of focus for ITLOS. Landmark rulings such as the *Bangladesh/Myanmar Maritime Boundary Delimitation* (2012)[32] established equitable principles for maritime boundary division in the Bay of Bengal. Similarly, the *Ghana/Côte d'Ivoire Delimitation* (2017)[33] and the *Mauritius/Maldives Delimitation* (2021) reaffirmed ITLOS's role in resolving complex maritime boundary disputes based on legal and geographical considerations.

ITLOS has also contributed significantly to deep-sea mining regulations through its Seabed Disputes Chamber. Notably, Case No. 17 (2011) issued an advisory opinion on the responsibilities of sponsoring states in seabed mining activities, clarifying state obligations and liability in deep-sea resource exploitation. Additionally, ITLOS has ruled on broader maritime disputes in cases such as *The M/V "Louisa" Case* (2013)[34], which dealt with alleged violations of UNCLOS provisions, *The M/V "Norstar" Case*

[27] Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Case No. 3&4, (1999) ITLOS Reports 280.
[28] MOX Plant Case (Ireland v. United Kingdom), Case No. 10, (2001) ITLOS Reports 95.
[29]Land Reclamation by Singapore in and around the Straits of Johor, Provisional Measures, (2003) ITLOS 10.
[30] "Arctic Sunrise" (Kingdom of the Netherlands v. Russian Federation), Order of 22 November 2013, (2013) ITLOS Reports 248.
[31]The 'Enrica Lexie' Incident, Italy v India, Order, provisional measures, ITLOS Case No 24, ICGJ 499 (ITLOS 2015)
[32] Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, Bangladesh v Myanmar, Judgment, ITLOS Case No 16, ICGJ 448 (ITLOS 2012).
[33] Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean, Ghana v Côte d'Ivoire, Judgment, ITLOS Case No 23, ICGJ 533 (ITLOS 2017)
[34] M/V 'Louisa' Case, Saint Vincent and the Grenadines v Spain, Merits judgment, ITLOS Case No 18, ICGJ 450 (ITLOS 2013)

(2019), and *The M/T "San Padre Pio" Case* (2019),[35] both of which reinforced principles related to navigation and sovereign immunity.

Most recently, ITLOS has expanded its role in addressing climate change-related legal issues. The Request for an Advisory Opinion by the Commission of Small Island States on Climate Change and International Law (2023) marked an important step toward integrating environmental concerns into maritime law. Collectively, these cases underscore ITLOS's evolving jurisprudence, reinforcing UNCLOS's legal framework and enhancing the resolution of maritime disputes worldwide.

2.4 PROVISIONAL MEASURES (ARTICLE 290)

Provisional measures are temporary, legally binding orders issued by ITLOS to safeguard the rights of parties or prevent irreparable harm while a maritime dispute is pending adjudication.[36] Article 290 of UNCLOS authorizes courts or tribunals to prescribe provisional measures to "preserve the respective rights of the parties or to prevent serious harm to the marine environment" if it appears prima facie that the tribunal has jurisdiction and that urgency requires it. These measures are binding on the parties (the Convention adds that parties "shall comply promptly" with them)[37], but they do not resolve the merits. Article 290(5) specifically allows a State to apply to ITLOS for provisional measures before an Annex VII arbitral tribunal is constituted. In practice, this has been an important route: when a dispute is submitted to Annex VII arbitration, either party may ask ITLOS to act quickly in the interim.

The procedural law of ITLOS on provisional measures is governed by UNCLOS Article 290 and by the Tribunal's Rules (Articles 89–95). A request must be in writing and specify the measures and reasons. If the arbitral tribunal is not yet formed, the request must also explain why that tribunal would have jurisdiction and why the situation is urgent. The Tribunal fixes the earliest possible hearing date (Rule 90(2)– (4)), giving the request priority over other cases. If an ITLOS Chamber is not available, a Chamber of Summary Procedure can be convened to handle it (Rule 91). Hearings are public and

[35] M/V 'Norstar' Case, Panama v Italy, Merits, ITLOS Case No 25, ICGJ 541 (ITLOS 2019); The M/T San Padre Pio Case, Switzerland v Nigeria, Provisional measures, ITLOS Case No 27, ICGJ 543 (ITLOS 2019)
[36] Declarations and Statements, The Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations (01 Jan. 2025). https://www.un.org/Depts/los/convention_agreements/convention_declarations.html/.
[37] UNCLOS Art. 290(6)

expedited. After hearing, ITLOS may grant all, some, or none of the requested measures, and even modify them (Rule 89(5)). Notably, ITLOS has routinely required the parties to report back: under Rule 95 each party must inform the Tribunal of compliance "as soon as possible", and the Tribunal may request further information on implementation.[38]

Several landmark ITLOS cases illustrate its provisional-measures practice. In *Southern Bluefin Tuna* (New Zealand v. Japan; Australia v. Japan, 1999)[39], New Zealand and Australia jointly sought to stop Japan's large-scale experimental fishing while arbitration was underway. ITLOS, without any judge of Japan on the bench (each side appointed a judge ad hoc), unanimously ordered Japan to limit its southern bluefin tuna catch according to existing management measures and to refrain from undermining the stability of the bluefin stock. The Tribunal emphasized the need to protect fish stocks (a "shared resource") and prescribed stringent conservation measures. In *The MOX Plant case* (Ireland v. UK, 2001)[40], Ireland challenged the UK's authorization of a plutonium reprocessing plant. ITLOS held a two-day hearing and on 3 December 2001 prescribed provisional measures by consensus. Noting the "fundamental principle" of cooperation in marine pollution prevention, the Tribunal ordered Ireland and the UK to cooperate immediately by consulting, exchanging information, and monitoring risks from the plant. This collaborative measure aimed to prevent marine harm until an Annex VII tribunal could be seated. In *Land Reclamation* (Malaysia v. Singapore, 2003)[41], Malaysia challenged Singapore's reclamation in the Straits of Johor. ITLOS found Malaysia had rights to be protected and, by unanimous Order on 8 October 2003, directed both States to cooperate. Crucially it ordered the creation of a joint group of independent experts to study the environmental impact, required information exchange and review of existing commitments, and directed Singapore not to undertake reclamation likely to cause irreversible harm. Thus, ITLOS took an active role (including appointing experts) to "de-escalate" the dispute pending arbitration.

More recent cases follow the same pattern. In *The "Arctic Sunrise" Case* (Netherlands v. Russia, 2013)[42], the Netherlands sought prompt release of a Greenpeace vessel

[38] UNCLOS Art. 95(2).
[39] Case No. 3&4 , *Supra 27.*
[40] Case No. 10, *Supra 28.*
[41] CaseNo. 12, *Supra* 29.
[42] Case No. 22, *Supra* 30.

detained by Russia in the Arctic. Russia refused to participate. On 22 November 2013, ITLOS ordered release of the vessel and crew upon the posting of a EUR 3.6 million bond by the Netherlands. The Tribunal observed that freedom of navigation and detention of vessels was central to UNCLOS, and that a bond was a suitable assurance pending final resolution. Finally, *in Enrica Lexie* (Italy v. India, 2015)[43], Italy sought measures for two Italian marines detained in India. After hearing arguments, on 24 August 2015 ITLOS ordered India to suspend any judicial or administrative proceedings against the marines that might aggravate the dispute. In other words, the Tribunal required both sides to freeze all relevant court actions while the Annex VII arbitration proceeded. The Lexie Order exemplified ITLOS's willingness to impose mutual restraints so as not to prejudice the merits decision.

These cases show the Tribunal's effectiveness in urgent situations: it can issue orders within weeks (often about one month from request). The provisional measures are binding, and many have been complied with (e.g. Singapore respected the Johor Order, Japan mostly complied with the tuna order, etc.). However, compliance is ultimately a state responsibility. ITLOS monitors through required reports, but it cannot itself enforce. Effectiveness has varied: for example, after the Arctic Sunrise Order, Russia quickly released the ship and crew. In other situations (like MOX and Johor), parties adhered largely to the cooperative spirit. Yet criticism remains that enforcement depends on goodwill and state diplomacy. *The Southern Bluefin Tuna case* is often cited as an example of ITLOS's limited enforcement power and competing state interests as Japan did not comply with any of the provisional measures ordered.[44] On the whole, provisional measures under Art. 290 allow ITLOS to play a vital preventive role in preserving ocean rights and environment.

2.5 PROMPT RELEASE OF VESSELS AND CREWS

The prompt release mechanism under Article 292 of UNCLOS is a distinctive procedure that enables the flag state of a detained vessel to request its release upon providing a reasonable bond or financial security. This mechanism serves to strike a balance between the coastal state's right to enforce its laws within its Exclusive

[43] Case No 24, *Supra* 31.
[44] Yoshifumi Tanaka, Provisional Measures Prescribed by ITLOS and Marine Environmental Protection, 108 AM. J. INT'L L. 365, 365–67 (2014).

Economic Zone (EEZ) and the flag state's interest in maintaining the uninterrupted operation of maritime activities.[45]

The objective of Article 292 is to avoid imposing an unreasonable burden on those involved in operating a vessel, which might result from prolonged detention by the coastal state for violations of its laws. At the same time, it protects the coastal state's interest by requiring a bond that ensures the potential payment of fines or penalties imposed by its municipal courts. As recognized by ITLOS in the *Monte Confurco* case, Article 73 identifies two competing interests: the coastal state's right to enforce its regulations and the flag state's interest in securing the prompt release of vessels and crews. Article 292 strikes a fair balance between these interests.[46]

Although prompt release can sometimes be associated with provisional measures under Article 290, it is important to distinguish between the two. Article 292 constitutes an independent legal procedure, and recourse to it is only available where the detaining state is alleged to have failed to comply with UNCLOS provisions requiring prompt release after posting a reasonable bond. These provisions are found in relation to fisheries violations (Article 73(2)) and pollution offences (Articles 220(7) and 226(1)(b) and (c)).[47]

Prompt release proceedings may only be initiated by or on behalf of the flag state. While the flag state remains the formal party, it may authorize a representative—such as the vessel's owner—to act on its behalf. The application must be filed no earlier than ten days following the vessel's detention, and ITLOS has clarified that admissibility requires (i) both parties to be states parties to UNCLOS, (ii) the applicant to be the flag state, and (iii) the application to concern non-compliance with the Convention's release provisions.[48]

According to Article 292(3), the Tribunal deals solely with the issue of release and does not rule on the merits of the case pending before domestic courts. The Tribunal's competence is thus narrowly focused, and judgment is typically delivered within about

[45] Seline Trevisanut, Twenty Years of Prompt Release of Vessels: Admissibility, Jurisdiction, and Recent Trends, 48 OCEAN DEV. & INT'L L. 300, 300–12 (2017).
[46] Monte Confurco Case (Seychelles v. France), Prompt release, Case No. 16,(2000) ITLOS Reports, 108, para 70 and 71.
[47] Rao & Gautier, *supra* 14, at 126.
[48] *Id.* at 128.

one month of filing. If the claim is upheld, ITLOS determines the amount, nature, and form of the bond, unless otherwise agreed by the parties.[49]

2.6 ADVISORY JURISDICTION

Since the inception of the Permanent Court of International Justice (PCIJ), advisory opinions have been instrumental in the progressive development of international law. As Judge José Luis Jesús observes, the PCIJ's advisory practice laid the groundwork for subsequent tribunals, notably the International Court of Justice (ICJ), and these procedural blueprints were largely incorporated into the Statute and Rules of ITLOS, most prominently in Annex VI and Part XI concerning the Seabed Disputes Chamber.[50] By echoing the PCIJ/ICJ model, States Parties signaled that advisory opinions, though non-binding, carry persuasive authority critical to interpreting and fleshing out the contours of UNCLOS obligations.[51]

ITLOS exercises its advisory function through two distinct channels. First, the Seabed Disputes Chamber, under Articles 159(10) and 191 UNCLOS, may be asked by the Assembly or Council of the International Seabed Authority to opine on whether proposed regulations or sponsorship obligations conform with the Convention.[52] The Chamber's inaugural request was made on 6 May 2010, concerning the "Responsibilities and Obligations of States Sponsoring Persons and Entities in the Area," and its opinion was delivered on 1 February 2011, clarifying due-diligence duties of sponsoring States under Part XI.[53] These opinions, though advisory, directly influence the regulatory regime of deep-sea mining and guide both the ISA and national legislation.

Second, the full Tribunal may grant advisory opinions under Article 138 of its Rules when authorized by "an international agreement related to the purposes of the Convention"[54]—enabling ad hoc bodies, such as regional fisheries commissions or

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[49] *Id.*
[50] J. L. Jésus, Statement of the President of the International Tribunal for the Law of the Sea, OLDEPESCA XX Conference of Ministers (Sept. 2–4, 2009).
[51] Tafsir Malick Ndiaye, The Advisory Function of the International Tribunal for the Law of the Sea, Chinese JIL (2010).
[52] U.N. Convention on the Law of the Sea, art. 191 (1982); Statute of the International Tribunal for the Law of the Sea, art. 21, Annex VI (providing advisory competence to the Seabed Disputes Chamber).
[53] Responsibilities and Obligations of States Sponsoring Persons and Entities in the Area (Advisory Opinion), ITLOS Case No. 17 (Feb. 1, 2011).
[54] Rules of the Tribunal, art. 138 (2013).

State coalitions, to seek authoritative guidance. In 2015, for instance, the Sub-Regional Fisheries Commission requested an opinion on illegal, unreported, and unregulated (IUU) fishing, resulting in an expansive articulation of flag-State due-diligence obligations that integrates FAO instruments into UNCLOS jurisprudence.[55] Unlike the Seabed Chamber's narrow request base, this mechanism allows broader stakeholder groups to shape maritime law, reflecting a shift toward more inclusive international adjudication.[56]

Critically, while ITLOS advisory opinions lack binding force, they serve three key functions: **(1)** they resolve interpretative ambiguities in UNCLOS and related instruments, fostering uniform State practice; **(2)** they pre-empt potential disputes by clarifying obligations before contentious litigation; and **(3)** they contribute to the legitimacy and authority of ITLOS as a law-making tribunal in the soft-law sphere.[57] However, their non-binding nature means that their practical impact depends on the political will of States and their readiness to integrate these opinions into domestic and treaty practice. In this respect, advisory opinions can be seen as both a strength—providing flexible, timely legal guidance—and a limitation, insofar as they rely on persuasive, rather than coercive, power to shape State behavior.[58]

2.7 ORGANIZATION OF THE TRIBUNAL

2.7.1 The Judges

As provided by Article 2 of its Statute, ITLOS is composed of 21 judges "enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea" elected by the States Parties to the United Nations Convention on the Law of the Sea (UNCLOS). According to Annex VI, Article 4(3) of the Convention, the election of judges was originally scheduled to take place within six months of the Convention's entry into force, meaning by 16 May 1995. However, a decision made by

[55] Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, (2015)ITLOS Reports 4; see also Catharine Titi, Freya Baetens, Robert Howse, Marcin J. Menkes, Walter Elochukwu Abah, 'Comparative Costs and Financing of Permanent Dispute Settlements Mechanisms', Academic Forum on ISDS Concept Paper 2022/1, 7 June 2022.
[56] Peter T. Boyle, Fragmentation, Advisory Opinions, and the Law of the Sea, 8 Int'l Lawyers Gazette 45, 52 (1997).
[57] Tom Ruys & Anemoon Soete, 'Creeping' Advisory Jurisdiction of International Courts and Tribunals? The Case of the International Tribunal for the Law of the Sea, 29 Leiden J. Int'l L. 155, 161–64 (2016).
[58] *Id*. at 28–30.

the Meeting of States Parties on 22 November 1994 postponed the first election to 1 August 1996.

Judges of the Tribunal serve a term of nine years, but to ensure a system of triennial elections in the future, the first 21 judges were elected for staggered terms: seven judges for nine years, seven for six years, and seven for three years. This system ensures a rotational election process that maintains continuity within the Tribunal.

According to Article 2 of the ITLOS Statute, judges are elected from among individuals with the highest reputation for fairness and integrity, as well as recognized competence in the law of the sea. The same article emphasizes the importance of ensuring representation from the world's principal legal systems and equitable geographical distribution. Article 3(2) of the Statute further stipulates that no fewer than three judges must be elected from each of the geographical groups established by the United Nations General Assembly. These groups include:

(a) The African Group – five judges

(b) The Asian Group – five judges

(c) The Latin American and Caribbean Group – four judges

(d) The Western European and Other States Group – four judges

(e) The Eastern European Group – three judges

This structured approach to judicial elections ensures that ITLOS maintains a balanced and diverse composition, reflecting global legal traditions and regional perspectives in the adjudication of maritime disputes.

2.7.2 President and Registry

The President and Vice-President of ITLOS are elected by the judges for a three-year term. The President presides over the Tribunal and represents it in international relations. The Registry is the administrative arm of ITLOS, responsible for managing case-related documents and supporting judicial activities.

2.7.3 Chambers of the Tribunal

The Seabed Disputes Chamber is a specialized body within ITLOS, composed of 11 judges elected from the Tribunal's members. The Chamber has jurisdiction over

disputes concerning deep-sea mining activities, environmental liability, and conflicts involving the International Seabed Authority.

ITLOS may also form special chambers to adjudicate specific categories of disputes. Such chambers are composed of selected members of the Tribunal and may be constituted upon the request of the disputing parties. Chamber for Marine Environmental Disputes that handles disputes related to marine pollution, environmental protection, and conservation, Chamber for Fisheries Disputes constituted to deal with disputes concerning the conservation and management of marine living resources and Chamber for Maritime Delimitation that resolves cases involving boundary delimitation between states are special chambers that has been established by ITLOS. In addition to these at the request of disputing parties, ITLOS can form ad hoc chambers to resolve specific disputes. The composition of these chambers is determined with the consent of the parties, providing flexibility in dispute resolution.

ITLOS is required to establish a Chamber of Summary Procedure annually, composed of five judges, to handle urgent cases requiring expedited proceedings. It ensures that ITLOS can respond swiftly to pressing maritime disputes.

The establishment of various chambers within ITLOS demonstrates its adaptability and commitment to effectively resolving maritime disputes under UNCLOS. These chambers ensure specialized adjudication while maintaining procedural fairness and efficiency.

2.8 Procedural Framework and Decision-Making Process

The procedural rules of ITLOS, established under Annex VI of UNCLOS, were adopted on 28 October 1997 and govern the Tribunal's legal proceedings. These rules empower ITLOS to manage cases effectively by outlining procedural phases, including the initiation of proceedings through an application or notification, the filing of pleadings such as memorials and counter-memorials, initial deliberations, oral hearings, and the issuance of judgments. Additionally, under Article 290 of the Convention and Article 89 of the Tribunal's Rules, ITLOS may prescribe provisional measures in urgent situations to prevent serious harm during ongoing proceedings. The procedural

framework thus ensures both effective case management and ITLOS's broader role in upholding maritime governance and the rule of law.[59]

2.8.1 Initiating Proceedings

A contentious case is initiated by the institution of the proceedings.[60]Proceedings before ITLOS can be initiated by an application (unilateral claim) or by notification of a special agreement between the disputing parties. Pursuant to Article 24 of the ITLOS Statute, the relevant documents are transmitted to the Registrar, who notifies all concerned parties, including States Parties to UNCLOS and the disputing parties. The application must specify the parties, legal grounds, and subject matter of the dispute. To ensure procedural fairness, all documents submitted by one party are transmitted to the other, and all procedural steps on behalf of the parties are undertaken by their designated agents. Moreover, while claims may be clarified in subsequent stages of the proceedings, they must remain within the limits initially set, preventing the dispute from being transformed into a different one.[61]

2.8.2 Written and Oral Phases

Cases proceed through a written phase, where parties submit memorials, counter-memorials, and other pleadings, followed by oral hearings.16 The conduct of the case, including the form and timing of argumentation, is determined by the Tribunal through respective orders. The written phase consists of the exchange of pleadings and supporting documents, which must be submitted in one or both of the Tribunal's official languages (French or English). The oral phase includes hearings where parties present arguments, examine witnesses, and respond to Tribunal inquiries. Pursuant to Article 45 of the Rules, the President of the Tribunal consults with the parties on procedural matters, determining time limits and the order of pleadings. Additionally, in cases involving preliminary objections or third-party interventions, the organization of proceedings may be postponed. The Tribunal may allow third-party intervention under Article 31 of its Statute.[62]

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[59] M.O.M. Ravin**,** ITLOS and Dispute Settlement Mechanisms of the United Nations Convention on the Law of the Sea (United Nations–The Nippon Foundation Fellowship Program, Mar.–Dec. 2005).
[60] Konrad Jan Marcinak, *Settlement of disputes before the international Tribunal for the law of the sea* in RESEARCH HANDBOOK ON INTERNATIONAL PROCEDURAL LAW 104-120 (Joanna Gomula, Stephan Wittich eds., 2024)
[61] *Id.*
[62] MOM Ravin, *Supra 59.*

2.8.3 Decision-Making

Before finalizing a judgment, ITLOS provides multiple opportunities for judges to exchange views in private deliberations, ensuring secrecy unless decided otherwise. Judges, select registry members, and experts under Article 289 UNCLOS may participate.

Following the closure of the written phase, Article 68 of ITLOS Rules mandates an initial private meeting where judges discuss pleadings and case conduct. This stage, unlike ICJ procedures, allows early collective discussion without requiring written notes, streamlining deliberations. During hearings, judges may convene informally to discuss issues and potential questions for parties.

After oral proceedings, judges reconvene within four working days for final deliberations, where they consider key legal issues and present tentative opinions. The President may either seek consensus or request written opinions before resuming discussions. A Drafting Committee of five judges from the majority prepares a first draft judgment within three weeks. A second draft follows within three months, usually finalized in two readings, though a third may occur for minor edits.

The judgment is adopted by a majority vote (with the President having a casting vote) and each operative provision being normally voted upon separately. The required quorum is 11 judges who cannot abstain and should in principle vote in person. The primary form of the Tribunal's (or chamber's) decision is naturally a 'judgment', which decides on the rights and liabilities of the parties, either by disposing of a case in whole or with respect to a specific part thereof. Procedural decisions for the conduct of the case take the form of an 'order'. The latter is also used to record a discontinuance of the case. The basic elements of a judgment include: the reasons on which it is based; names of the judges who have taken part in the decision; judges' separate, dissenting opinions or declara-tions; signatures of the President and the Registrar. The judgment shall be read in open court and its copies (in both official languages of the Tribunal) shall be stored in the archives of the Tribunal, and transmitted to the parties."[63]

Despite judgments being final and binding, disputes over interpretation may arise. Article 33 ITLOS Statute allows parties to seek clarification through application or

[63] Konrad Jan Marcinak, *Supra* 60.

special agreement. Additionally, ITLOS Rules permit revision requests if a decisive, previously unknown fact emerges, handled by the original deciding body.

2.9 Conclusion

In sum, ITLOS stands as a cornerstone of the UNCLOS dispute-settlement regime, offering a dedicated, permanent tribunal with broad—but carefully circumscribed—jurisdiction over the interpretation and application of the Convention. By exercising both contentious and advisory functions, and by deploying specialized Chambers for environmental, delimitation, and seabed disputes, ITLOS has filled a crucial niche that other fora cannot match in terms of maritime expertise and procedural flexibility. Its "cafeteria" model of compulsory procedures (Article 287) combined with limited opt-outs (Article 298) ensures that States retain choice, yet can be compelled into binding adjudication when they have signaled consent or in urgent scenarios under Articles 290 and 292. The Tribunal's prompt-release cases and provisional-measures practice demonstrate its capacity to deliver swift, legally binding orders—albeit one whose effectiveness ultimately depends on States' political will to comply. While overlaps with the ICJ and Annex VII/ VIII arbitral tribunals persist, and enforcement remains a perennial challenge, ITLOS has nonetheless crystallized uniform rules on navigation, resource rights, and environmental protection. As maritime disputes grow in complexity—driven by climate-induced boundary shifts, deep-sea mining, and emerging technologies—ITLOS's specialized procedures, expert composition, and ability to issue both judgments and persuasive advisory opinions will be indispensable for maintaining legal certainty and sustainable ocean governance.

CHAPTER 3
ITLOS AND ENVIRONMENTAL PROTECTION

3.1 INTRODUCTION

The protection and preservation of the marine environment form a fundamental part of the United Nations Convention on the Law of the Sea (UNCLOS). In recent decades the International Tribunal for the Law of the Sea (ITLOS) has increasingly addressed the tension between coastal/maritime entitlements and the duty to protect the marine environment under UNCLOS addressing issues such as transboundary pollution, conservation of marine living resources, and the duty to conduct environmental impact assessments (EIA). UNCLOS, often referred to as the "constitution for the oceans,"[64] provides a comprehensive legal framework for marine environmental protection. Part XII of UNCLOS obliges States to "protect and preserve the marine environment"[65] and "prevent, reduce and control pollution of the marine environment"[66] from all sources. ITLOS has interpreted these provisions in a series of cases, often under its Article 290 provisional-measures jurisdiction, to impose precautionary and cooperative measures on States carrying out activities that could harm the seas. This chapter analyses ITLOS's key environmental rulings, including its early fishery and pollution orders and later advisory opinions, and compares ITLOS's approach to how other UNCLOS dispute mechanisms have handled similar issues.

3.2 ITLOS'S JURISDICTION OVER ENVIRONMENTAL MATTERS

The jurisdiction of ITLOS in environmental disputes stems from UNCLOS, particularly Parts XII and XV. Part XII of UNCLOS establishes the legal framework for the protection and preservation of the marine environment.[67] Articles 192 to 237 outline the duties of states concerning marine pollution prevention, cooperation in scientific

[64] Jonathan Havercroft & Alice Kloker, *A Constitution for the Ocean? An Agora on Ocean Governance*, 13 GLOB. CONST. 13, 13–15 (2024).
[65] UNCLOS art. 192.
[66] UNCLOS art. 194(2).
[67] Abdulla, A. A., Flag State Jurisdiction of the Maldives: Protection and Preservation of the Marine Environment from Vessel Source Pollution, Int'l J. Soc. Rsch. & Innovation, Vol. 5, No. 1 (2021).

research, and the establishment of global and regional rules for environmental protection.

The Tribunal also provided clarification on the interpretation of Article 192 of the Convention. Although the obligation to protect and preserve the marine environment is included in Part XII-dealing mainly with the pollution of the environment -its effect is not limited to pollution. As emphasized by the Tribunal in its order on provisional measures in the *Southern Bluefin Tuna Cases* (New Zealand v. Japan; Australia v. Japan)[68], the duty to conserve living marine resources is considered an integral aspect of the broader obligation to protect and preserve the marine environment. The practical effect of article 192 on the obligations of the flag State was also underlined by the Tribunal in its advisory opinion of 2015:

> As article 192 applies to all maritime areas, including those encompassed by exclusive economic zones, the flag State is under an obligation to ensure compliance by vessels flying its flag with the relevant conservation measures concerning living resources enacted by the coastal State for its exclusive economic zone because... they constitute an integral element in the protection and preservation of the marine environment,[69]

3.3 KEY ITLOS CASES ON ENVIRONMENTAL PROTECTION

3.3.1 The Southern Bluefin Tuna Cases (1999): Fisheries Conservation and Precaution

In August 1999 ITLOS faced its first environmental dispute: Australia and New Zealand sought provisional measures against Japan over the depleted Southern Bluefin Tuna (SBT) stock in the Pacific. The Parties agreed that the stock was "severely depleted".[70] ITLOS held that this triggered UNCLOS obligations to conserve living resources. Citing Article 290's text on preserving parties' rights or preventing "serious harm to the marine environment," the Tribunal prescribed precautionary measures. It noted scientific uncertainty about effective conservation levels, and stressed that the

[68] *Southern Bluefin Tuna* Cases (Australia v. Japan; New Zealand v. Japan), Order for Provisional Measures, ITLOS Case Nos. 3 & 4 (Aug. 27, 1999), 38 I.L.M. 1360 (1999).
[69] Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, 37, para. 120.
[70] *Southern Bluefin Tuna* Cases (Australia v. Japan; New Zealand v. Japan), Order for Provisional Measures, ITLOS Case Nos. 3 & 4 (Aug. 27, 1999), 38 I.L.M. 1360 (1999).

Parties "should act with prudence and caution to ensure that effective conservation measures are taken to prevent serious harm to the stock of Southern Bluefin Tuna".[71] By overwhelming majority (20–2), ITLOS ordered Australia, New Zealand and Japan to resume negotiations and to cap annual catches at previously agreed quotas. It also urged the Parties to refrain from experimental fishing programs and to consult with other SBT harvesters to promote conservation.

The SBT Order (ITLOS Cases Nos. 3 & 4, 1999) was remarkable for explicitly applying UNCLOS conservation provisions (Part VII on fisheries and Part XII on environmental protection) to a high-seas fishery. Although the disputes were nominally about fishing rights (Part V/VI), the Tribunal clearly framed them as involving marine pollution/preservation obligations. By invoking Article 290's reference to "serious harm to the marine environment," ITLOS essentially treated the collapsing tuna stock as an environmental crisis requiring urgent protection. The measure to "limit catches to levels last agreed" and to "resume negotiations…with a view to reaching agreement on measures for the conservation and management of SBT" reflect a cooperative, precautionary approach.[72] In its reasoning (esp. separate opinions), ITLOS underscored that UNCLOS's marine-environment articles (Arts. 61, 116–119, among others) place a duty on all parties to conserve living resources, even in Areas Beyond National Jurisdiction. In short, ITLOS used its provisional-measures power to nudge the Parties toward compliance with UNCLOS conservation norms, setting a precedent that UNCLOS arbitrators and the International Court had not yet explicitly done. (Notably, the SBT Order occurred before UNCLOS Part XIV enforcement and before high-seas fisheries were heavily regulated under global instruments such as UNFSA.) The SBT case thus illustrates ITLOS's willingness to presume environmental obligations govern even transboundary resource disputes, and to apply precaution when stocks are endangered.

3.3.2 The MOX Plant Case (Ireland v. United Kingdom) (2001)[73]

The next landmark was Ireland's challenge to the UK's new MOX (mixed-oxide fuel) reprocessing plant at Sellafield (1999–2001). Ireland argued that MOX operations and

[71] *Id.*
[72] *Id.*
[73] *MOX Plant* Case (Ireland v. United Kingdom), Order for Provisional Measures, ITLOS Case No. 10 (Dec. 3, 2001), 41 I.L.M. 634 (2002).

transports would "contribute to the pollution of the Irish Sea" and pose risks to the marine environment. Under UNCLOS Article 290(5), Ireland sought provisional measures pending an Annex VII arbitration. In December 2001 ITLOS delivered its Order on Provisional Measures (Case No. 10) by majority. Although the Tribunal ultimately found that a binding halt of operations was premature, it nevertheless imposed stringent cooperative obligations reflecting its environmental mandate. The Tribunal held that "prudence and caution" under customary and UNCLOS law required Ireland and the UK to "cooperate in exchanging information concerning risks or effects of the operation of the MOX plant and in devising ways to deal with them".[74] It "prescribed the following provisional measure, pending a decision by the Annex VII arbitral tribunal":

"Ireland and the United Kingdom shall cooperate and shall, for this purpose, enter into consultations forthwith in order to: (a) exchange further information with regard to possible consequences for the Irish Sea arising out of the commissioning of the MOX plant; (b) monitor risks or the effects of the operation of the MOX plant for the Irish Sea; (c) devise, as appropriate, measures to prevent pollution of the marine environment which might result from the operation of the MOX plant." [75]

Thus ITLOS did not order shutdown of the plant, but it imposed an affirmative duty to collaborate on risk management. In the Order, President Rao and others emphasized that States must not only enact laws but take "administrative measures" (arts. 194, 290) to safeguard the sea. Judge Wolfrum's separate opinion (for instance) stressed that marine environment protection is a "fundamental principle" of UNCLOS, invoking both the duty to cooperate (Art. 197, 283) and the precautionary principle as customary law. In short, ITLOS treated the MOX dispute as an environmental matter and used Article 290 to require ongoing vigilance: the plant could operate, but Ireland and the UK had to keep each other informed and prevent any "pollution of the marine environment".[76]

The MOX Order illustrates how ITLOS balances industrial development against ocean protection. It recognized States' right to pursue nuclear technology, yet underscored that UNCLOS Part XII and general international law impose a positive duty to avoid

[74] *Id.*
[75] *Id.*
[76] *Id.*

marine harm. By focusing on information-exchange and monitoring rather than instant halting of operations, the Tribunal reflected the uncertainty about actual damage while still erring on the side of caution ("prudence and caution"). This approach is often described as a "cooperative precautionary" remedy: the Tribunal did not usurp the Annex VII arbitrators' role on merits, but it ensured that in the interim the Parties would share data and prepare mitigation. Indeed, ITLOS required each Party to report on compliance by mid-December 2001, and it reminded them that failure to cooperate might itself breach UNCLOS (invoking Art. 197 duty to cooperate).

3.3.3 The Land Reclamation Case (Malaysia v. Singapore) (2003)[77]

Shortly thereafter, in 2003 ITLOS confronted another environmental dispute: *Malaysia v. Singapore* over Singapore's large-scale land reclamation in the Johor Straits. Malaysia claimed that Singapore's infilling in the Straits (used as a shipping lane separating Singapore from Malaysian territory) would alter currents and damage Malaysian fishing grounds and coastline. In its 8 October 2003 Order (Case No. 12), ITLOS again focused on precaution and inter-State cooperation. First, as in previous cases, ITLOS confirmed it had jurisdiction and that urgency could justify provisional measures. The Tribunal then addressed the substance: it recognized that some reclamation, if improperly undertaken, could cause "irreversible damage" to the other party's rights or serious environmental harm. Consequently, "prudence and caution" required fresh steps.

Most notably, ITLOS unilaterally prescribed that "Malaysia and Singapore shall cooperate and shall…enter into consultations forthwith in order to: (a) establish promptly a group of independent experts" to study the effects of the reclamation (with agreed terms of reference), including an interim report on ongoing works; (b) "exchange, on a regular basis, information on, and assess risks or effects of, Singapore's land reclamation works"; and (c) implement their existing commitments and negotiate any temporary adjustments needed in Pulau Tekong Area D until the expert study is done. Crucially, the Tribunal then "directs Singapore not to conduct its land reclamation in ways that might cause irreparable prejudice to the rights of Malaysia or serious harm to the marine environment," taking into account the experts' forthcoming reports. In

[77] *Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore),* Order for Provisional Measures, ITLOS Case No. 12 (Oct. 8, 2003), 43 I.L.M. 137, 145 (2004)

other words, Singapore was explicitly forbidden from proceeding with any action that could cause "serious harm to the marine environment" until the scientific study and consultations were completed.

ITLOS's Land Reclamation Order is significant for its active management of a coastal-works dispute. It went beyond a bare finding of jurisdiction: it ordered creation of an independent scientific panel – an unusual step for a tribunal – to fact-find and recommend environmental safeguards. The Tribunal thus recognized that the works had a high potential for transboundary impact. By mandating review of the Pulau Tekong causeway and demanding adherence to international environmental standards, ITLOS effectively paused potentially damaging activities while underlining States' UNEP-like duties. The unanimous nature of the Order (no dissents to the measure language) underscored a unified message: national development projects in marine zones must not proceed unchecked when they carry risks of grave environmental effects. In form and spirit, ITLOS acted as a steward of the marine environment, imposing an "irrevocability" constraint (no irreversible harm) akin to environmental injunctions in other fields, but applied here within the UNCLOS framework.

3.3.4 Advisory Opinion on Deep Seabed Mining (2011)[78]

In 2011 the Seabed Disputes Chamber of ITLOS (a special chamber) handed down its first Advisory Opinion, at the request of the International Seabed Authority. The case involved deep-sea mining under the "Area" (the seabed beyond national jurisdiction). The Council of ISA asked: what obligations do sponsoring States have, and what liability do they incur, for activities of their contractors in the Area? Importantly for environmental law, the Opinion (Advisory Opinion, Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area, 2011) robustly linked sponsoring States' duties to protect the marine environment.

The Chamber unanimously affirmed that sponsoring States are bound by an obligation of *"due diligence"* under UNCLOS. It explained that a sponsoring State must "make best possible efforts" to secure that its sponsored contractor complies with the contract and with the environmental terms of the Convention. In practice, this means the State

[78] Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Advisory Opinion, Seabed Disputes Chamber, ITLOS (Feb. 1, 2011), 50 I.L.M. 648 (2011).

must enact and enforce domestic laws and administrative measures that ensure environmental protection. The Chamber detailed several *direct* obligations of the sponsoring State: for example, to apply a precautionary approach (as embodied in Principle 15 of the Rio Declaration and in the Regulations governing exploration and exploitation), to apply "best environmental practices" set out in the regulations, and to provide liability guarantees or compensation measures. The Opinion explicitly tied these standards to marine protection: it noted that the obligation to conduct an environmental impact assessment is set out by UNCLOS (Art. 206) and is a general obligation under customary law.

Thus, the 2011 Advisory Opinion extended the environmental commitments of the deep-sea mining regime to sponsoring States, not just contractors. The Tribunal stated, for instance, that a sponsoring State's "due diligence" must include ensuring its contractors follow the Convention's EIA requirements and that the State must itself adopt appropriate laws and regulations to *ensure compliance* with those obligations. The Chamber even described the requirement to adopt domestic enforcement mechanisms (e.g. licensing conditions, penalties, public accountability) as necessary for a State to qualify for any liability exemption. In short, the advisory reinforced that protecting the marine environment in the Area is a joint responsibility of contractors and their sponsoring countries. From an environmental standpoint, it cemented that UNCLOS Part XI (the seabed regime) is subject to the same ecosystem-protection principles as Part XII (marine environment) and Article 206 (EIA). Critics have noted that the Opinion explicitly placed environmental stewardship and precaution at the core of deep-sea resource development, an important step for oceans governance.

3.3.5 Advisory Opinion on Climate Change (2023/2024): Climate Obligations under UNCLOS[79]

The most recent and far-reaching development is the advisory opinion requested in 2023 by the Commission of Small Island States on Climate Change and International Law (COSISIL). Small island parties to a dedicated agreement sought guidance on how UNCLOS obligations constrain states' conduct of greenhouse gas (GHG) emissions and their duty to protect the marine environment from climate impacts. After extensive

[79] Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024, (2024) ITLOS Reports 4.

written and oral proceedings in late 2023, ITLOS's Seabed Chamber rendered its Opinion in May 2024 (Case No. 31). This was the first time the Tribunal had given a judicial pronouncement on climate change, and it explicitly applied UNCLOS to climate-related marine protection.

In broad terms, the Tribunal recognized that climate change and its oceanic effects fall squarely within UNCLOS's environmental scope. As the Opinion notes, climate change is "recognized…as a common concern of humankind," and it has "deleterious effects on the marine environment" including ocean warming, sea-level rise and acidification that threaten coastal States – especially vulnerable small islands. Thus UNCLOS requires States to take measures to prevent, reduce and control the entry into the marine environment of the greenhouse gases (CO_2, methane, etc.) that cause these harms. In the words of ITLOS: although terms like "climate change" and "greenhouse gases" are not explicitly in UNCLOS, these emissions qualify as "pollution of the marine environment" because they are human-introduced energy/substances that cause harm to the oceans.[80]Once categorized as pollution, all UNCLOS Part XII duties apply. Consequently, the Tribunal identified the core obligations in UNCLOS Articles 192–194 (and related sections) as applicable. It concluded that Article 194's duty to adopt all "necessary" measures to protect and preserve the marine environment must be interpreted broadly – to include "indispensable" measures needed to prevent climate-linked pollution.[81]

In practical effect, the advisory elaborated that States must enact and enforce laws limiting GHG emissions consistent with UNCLOS environmental goals. Mirroring the deep-seabed advisory, ITLOS reaffirmed the "due diligence" standard: each State must ensure, through its domestic system, that sources under its jurisdiction comply with emission controls.[82] Thus the Opinion treats Article 206 (environmental impact assessment) and other pollution controls as alive and applicable: for example, States are expected to perform impact assessments of major emitting projects like they would for offshore discharges, and to adjust those projects to prevent harm to the marine environment. The Tribunal also noted that States must cooperate (Art. 197) on ocean-based climate relief, such as protecting blue carbon sinks (mangroves, seagrasses) that

[80] Dimitrios Dimitrakos, The ITLOS Advisory Opinion on Climate Change: A Brief Review, ASIL Insights, Vol. 29, Issue 5 (Apr. 11, 2025).
[81] *Id.*
[82] *Id.*

sequester CO_2. By answering COSISIL's questions, ITLOS made clear that the Convention's mandate "to prevent, reduce and control pollution of the marine environment" extends to anthropogenic climate pollution, thereby linking global climate obligations to the law of the sea.

The unanimous nature of the Advisory (each judge concurring) underscores its weight. Scholarly commentary highlights that ITLOS's climate opinion is novel in explicitly recognizing UNCLOS as a framework for ocean-based climate governance. As ASIL observers note, ITLOS systematically went through UNCLOS provisions (Art. 192–194, 207, 212, etc.) and confirmed that obligations like the precautionary principle and "best environmental practices" (as already found in the MOX and seabed cases) also apply to climate-warming emissions. In sum, ITLOS has now laid down that States Parties have affirmative UNCLOS duties to mitigate climate change for the sake of ocean protection, just as they would for any other pollutant.

3.4 PRINCIPLES DEVELOPED BY ITLOS IN ENVIRONMENTAL JURISPRUDENCE

ITLOS has played a significant role in shaping and reinforcing key principles of international environmental law through its jurisprudence. The Tribunal's decisions have established clear legal obligations for states in maritime environmental governance, balancing economic activities with environmental sustainability.

Precautionary Principle: Although UNCLOS does not explicitly use the term "precautionary principle," its ethos is implicit in the marine environment obligations (e.g. UNCLOS art. 206 requires States to base decisions "on the best scientific evidence available" and not postpone measures for lack of certainty). Article 192 – the general duty to "protect and preserve the marine environment" [83]– likewise implies caution in the face of potential harm. In practice, ITLOS has repeatedly urged risk-averse action. For example, in *Southern Bluefin Tuna* (ITLOS 1999)[84] the Tribunal – noting scientific uncertainty about stock assessments – exhorted the parties to act "with prudence and caution" and to ensure conservation measures even before final agreement. Similarly, in the *MOX Plant* (Ireland v. UK, ITLOS 2001)[85] proceedings, although the Tribunal declined provisional measures on other grounds, one judge emphasized that "the

[83] P. CHANDRASEKHARA RAO & PHILIPPE GAUTIER, THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA: LAW, PRACTICE AND PROCEDURE (Elgar Int'l L. & Prac. Series, 2018).
[84] *Southern Bluefin Tuna* Cases (Australia v. Japan; New Zealand v. Japan), supra
[85] ITLOS Case No. 10 (Dec. 3, 2001), 41 I.L.M. 634 (2002).

precautionary principle… reflects the necessity of making environment-related decisions in the face of scientific uncertainty". ITLOS thus treats precaution not as optional rhetoric but as a core duty flowing from UNCLOS obligations.

Due Diligence: Under UNCLOS, States must not allow activities under their jurisdiction to harm other States or the marine environment. Article 194(2) echoes the "no-harm" duty of Principle 2 of the 1992 Rio Declaration, and Part IX (straddling/semi-enclosed seas) and Part II (flag-state jurisdiction) impose similar standards (e.g. art. 94 on effective flag-state control). ITLOS has interpreted these clauses to impose a strict vigilance obligation. In the Area Advisory, the Tribunal defined due diligence as requiring sponsoring States to "take all appropriate measures to prevent damage" from their contractors' activities, even where scientific evidence is incomplete; failure to consider plausible risks would itself breach due diligence.[86] The climate AO underscores this rigor: it notes that under art. 194(1) UNCLOS parties must take "all necessary measures" (due diligence) to protect against transboundary pollution, and that the standard is "stringent, given the high risks of serious and irreversible harm"[87]. Thus ITLOS applies a demanding "take-every-precaution" view in line with UNCLOS duties. ITLOS reinforces that due diligence – the State's duty to control activities and enforce compliance – is a baseline UNCLOS obligation, often filling gaps when scientific uncertainty prevails.

Cooperation: UNCLOS repeatedly mandates State cooperation on environmental protection. Article 197 requires "global and regional" cooperation and information-exchange on marine pollution; Article 123 imposes cooperation obligations in semi-enclosed seas; Articles 117–119 and UNCLOS Annex 1 (or the Fish Stocks Agreement) require cooperation on managing shared fish stocks. ITLOS has actively enforced these duties. In *Southern Bluefin Tuna*, it noted that UNCLOS expressly requires Australia, New Zealand and Japan to cooperate on conserving the stock, and it urged the parties "to intensify their efforts to cooperate … with a view to ensuring conservation and promoting the objective of optimum utilization" of the stock. Likewise, in the *Land Reclamation in the Straits of Johor* case (Malaysia v. Singapore, ITLOS 2003) the Tribunal declared that "[t]he duty to cooperate is a fundamental principle in the

[86] Responsibilities and obligations of States with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber),(2011) ITLOS Reports 10.
[87] Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024, (2024) ITLOS Reports 4.

prevention of pollution of the marine environment under Part XII".[88] The Order then required Malaysia and Singapore to "cooperate and…enter into consultations forthwith" and even to "establish promptly a group of independent experts" to assess environmental risks.[89] By contrast, in the *MOX Plant* case Ireland's attempts to compel UK–Ireland cooperation (through UK notification or joint studies) were largely rebuffed by the majority, though Judge Wolfrum noted that UNCLOS art. 194(2) "reflects customary law" requiring exactly such cooperation. Overall, ITLOS has pressed for affirmative cooperation – more so than some arbitration tribunals, which often focus on obligations on one party rather than collaborative remedy.

Sustainable Development: Sustainable development – harmonizing use of marine resources with their conservation – is an overarching objective of UNCLOS, if not always explicitly named. UNCLOS Part VII and Article 61, for example, instruct coastal States to maintain living resources at "levels which can produce the maximum sustainable yield" and to promote "optimum utilization"[90]. Article 119 likewise speaks of "maximum sustainable yield" on the high seas. ITLOS has echoed this balance. The *Southern Bluefin Tuna* Order, after noting the duty to conserve, stressed that any measures must also serve the goal of "optimum utilization" of the stock – essentially the notion of sustainability. More recently, the Climate Change AO recognized that in implementing UNCLOS's pollution rules, States must also heed their obligations to ensure continued availability of the marine environment (implicitly an SD goal) and to consider socio-economic implications. In general, the Tribunal's language often pairs "conservation" with "utilization" or "development," reflecting the UNCLOS ethos.

3.5 Emerging Maritime Challenges: Climate Change and Deep-Sea Mining

Climate change is an unprecedented challenge for the law of the sea. Although UNCLOS does not explicitly mention climate phenomena, its broad environmental provisions can encompass climate impacts. The coming decades will bring increasingly complex environmental disputes before ITLOS as climate change reshapes ocean

[88] Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore), (2003) ITLOS Reports 10.
[89] *Id.*
[90] Howard S. Schiffman, *International Law and the Protection of the Marine Environment*, in International Law and Institutions (Encyclopedia of Life Support Systems, EOLSS, UNESCO) (n.d.).

spaces and deep-sea mining moves from prospecting to commercial operations. Sea-level rise, ocean acidification, acid-base imbalances, and the intensification of extreme weather events pose threats to coastal States' maritime zones and ecosystems, yet no specific contentious climate case has reached ITLOS. Nonetheless, the Tribunal's existing jurisdiction under Part XII and its provisional measures in similar environmental matters suggest an avenue for future climate-related claims. The 2024 ITLOS Advisory Opinion confirmed that human-induced greenhouse gas (GHG) emissions into the atmosphere qualify as "pollution of the marine environment" under UNCLOS Art. 1(1)(4).[91] This finding effectively triggers UNCLOS Part XII duties. In particular, Article 194(1) requires States to take "all measures necessary to prevent, reduce and control pollution of the marine environment from any source," which ITLOS read to include GHGs.[92] Thus, under the Tribunal's guidance, UNCLOS now mandates that Parties engage in climate change mitigation and adaptation measures affecting the sea. ITLOS emphasized that such measures must be based on the "best available science" (e.g. IPCC findings) and must reflect relevant international regimes, notably the UNFCCC[93] and Paris Agreement[94] (particularly its 1.5 °C goal). It also stressed that States must apply a stringent due-diligence standard and the precautionary approach: lack of full certainty cannot justify delaying action.

However, significant legal and institutional gaps remain. UNCLOS provides a general framework but lacks detailed rules for climate regulation. For example, it contains no provisions on atmospheric emissions or sea-level rise, leaving states to interpret Article 192/194 obligations in novel ways. Issues like the loss of baselines due to sea-level rise, or the status of low-lying island states, are not resolved by UNCLOS and require creative legal solutions (some have invoked Articles 1 and 121(3) on baselines and islands, but outcomes are uncertain). Institutionally, climate change is primarily governed by separate regimes (UNFCCC, IPCC). While Article 197 of UNCLOS calls for global cooperation among states and international organizations to protect the

[91] Gibson, Dunn & Crutcher LLP, The International Tribunal for the Law of the Sea's Advisory Opinion on Climate Change and Its Implications, GIBSON DUNN (May 21, 2024) https://www.gibsondunn.com/international-tribunal-for-law-of-the-sea-advisory-opinion-on-climate-change-and-its-implications/.
[92] *Id.*
[93] United Nations Framework Convention on Climate Change, adopted May 9, 1992, 1771 U.N.T.S. 107; 31 I.L.M. 849 (1992).
[94] Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104; 55 I.L.M. 740 (2016).

marine environment, there is no standing forum linking the law of the sea with climate law. The ITLOS opinion itself relied heavily on external instruments (UNFCCC, Paris Agreement) to define obligations. This fragmentation means that even if ITLOS clarifies UNCLOS duties, implementing them depends on cooperation across UN bodies and national law.

Despite these challenges, ITLOS has shown an ability to address climate issues within its mandate. The 2024 Advisory Opinion is a milestone: it articulated state obligations to mitigate ocean-affecting emissions and protect marine resources (including by reducing harm to "rare or fragile ecosystems" – e.g. corals under Art. 194(5)). Nevertheless, the Tribunal was cautious not to overstep; it refused to set specific emissions targets or dictate climate policies. Scholars observe that ITLOS refrained from prescribing "emission reduction standards or climate ambition in abstracto" and noted that its conclusions are obligations of conduct, not result, subject to states' capabilities.[95] In other words, while UNCLOS now clearly requires climate action affecting the oceans, the exact measures remain up to each State. Roland Holst warns that expectations of a direct impact on global climate efforts should be tempered.[96] Yet, he also argues that ITLOS's interpretation – and the very fact of engaging the ocean-climate nexus – has value: it raises awareness and could influence future ocean-related climate policies.[97] In sum, ITLOS has capacity to clarify and progressively develop ocean-environment law in the climate context, but any practical effect depends on states and other institutions implementing those clarifications. The Advisory Opinion itself notes that cooperation (Art. 197) is key, suggesting that UNCLOS Parties should coordinate with the UNFCCC and other bodies.

Deep-sea mining is another emerging frontier. Exploiting polymetallic nodules, sulphides and cobalt crusts on the ocean floor promises valuable minerals but poses risks to unique marine ecosystems. UNCLOS Part XI and the 1994 Agreement created the International Seabed Authority (ISA) to regulate these "Area" activities. The legal challenge is to reconcile resource development with the protective objectives of Part XII. Article 145 of UNCLOS expressly requires States to take "necessary

[95] *Id.*
[96] Rozemarijn J. Roland Holst, Taking the Current When It Serves: Prospects and Challenges for an ITLOS Advisory Opinion on Oceans and Climate Change, 32 REV. EUR., COMPARATIVE & INT'L ENV'T L. 217 (2023).
[97] *Id.*

measures… to ensure effective protection for the marine environment from harmful effects" of seabed activities. Moreover, Article 139 imposes on sponsoring States a "responsibility to ensure" that activities by their contractors comply with Part XI (including environmental rules). The 2011 ITLOS Seabed Advisory Opinion elaborated these duties. It confirmed that sponsoring States must apply a broad due-diligence standard: they must ensure their contractors adopt a precautionary approach and best environmental practices. For example, the ISA's Sulphides Regulations explicitly require contractors to "prevent, reduce and control pollution… as far as reasonably possible applying a precautionary approach and best environmental practices"[98]. Even when contract clauses are silent (as in the older Nodules Regulations), the Tribunal held that States must compel compliance through their domestic laws.[99] ITLOS also highlighted mandatory environmental impact assessments (EIA) for seabed mining (in UNCLOS Art. 206 and the 1994 Agreement) and noted that States must cooperate in monitoring (Art. 209) and provide compensation channels (Art. 235). For instance, UNCLOS Art. 235(2) requires States to ensure domestic recourse for "prompt and adequate compensation" for pollution damage caused under their jurisdiction; ITLOS pointed out that sponsoring States must fulfill this by enabling contractor liability for environmental harm.[100]

These findings flesh out UNCLOS's general provisions for the new mining context, but significant gaps remain. The ISA has only adopted draft exploitation regulations (under discussion as of 2024), and the technology for mining is rapidly evolving, making it hard to predict impacts. ITLOS's advisory described certain "necessary and appropriate measures" (e.g. insurance guarantees, emergency response funding) but actual implementation depends on ISA and sponsoring States. Jurisdictionally, disputes over deep-sea mining would typically fall to the Seabed Disputes Chamber (a special chamber of ITLOS under Annex VI) or Annex VII arbitration, but no contentious case has yet tested these rules. Thus, ITLOS's main contribution so far is interpretive. Its 2011 opinion has normative force – it is "an authoritative statement of law" on UNCLOS obligations[101] – but it does not create new binding rules beyond UNCLOS.

[98] Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Case No. 17, Advisory Opinion of Feb. 1, 2011, 2011 ITLOS Rep. 10 (Advisory Op.).at 47
[99] *Id. At 47*
[100] *Id.*
[101] Rozemarijn J. Roland Holst, *Supra 96.*.

Enforcement of environmental rules in the Area remains with national courts and the ISA's own compliance mechanisms (e.g. supervisory powers, rules for suspension or termination of contracts). In short, ITLOS can articulate deep-sea mining obligations under UNCLOS and amplify precautionary principles, but its capacity is limited to interpretation. It cannot regulate mining operations directly or compel the ISA to act; it simply clarifies what UNCLOS already requires.

In both domains – climate change and deep-sea mining – ITLOS has shown a willingness to engage with novel issues, drawing on UNCLOS's environmental principles to address them. Yet the institutional challenge is that UNCLOS alone cannot resolve all aspects of these problems. As Holst observes, making the oceans' climate-related governance part of the legal system is a long and difficult process[102]. ITLOS's recent opinions represent initial steps in this process: they extend maritime law by reference to global scientific and policy frameworks, but their impact ultimately hinges on states and international bodies' follow-up. Although ITLOS cannot enforce environmental standards, its advisory opinions provide legal guidance. As Holst concludes, an ITLOS opinion that clarifies UNCLOS obligations and raises the salience of the "ocean-climate nexus" could help integrate climate considerations into ocean governance.[103] Similarly, the 2011 Seabed Advisory Opinion has already influenced the ISA's regulatory development and will inform how sponsoring States craft domestic legislation. In sum, ITLOS's capacity is as an interpreter and norm-clarifier: it can frame emerging challenges within the framework of UNCLOS and signal the direction of legal evolution, but it cannot itself remedy enforcement gaps or political disputes. Its value lies in strengthening the international rule-of-law framework for maritime environmental protection, which must be carried forward by states and other institutions.

3.6 Challenges in ITLOS's Role in Environmental Protection

The International Tribunal for the Law of the Sea (ITLOS) has a clear mandate under UNCLOS Part XII to interpret and apply the law of the sea concerning marine environmental protection (e.g. UNCLOS arts. 192–193, 194). In practice, however, ITLOS faces several obstacles in realizing this mandate. First, compliance and

[102] *Id.*
[103] *Id.*

enforcement of its decisions are inherently limited. ITLOS rulings (and especially advisory opinions) are binding only on the parties that accept its jurisdiction, and UNCLOS provides no international enforcement arm. In effect, compliance depends on states' good faith. As commentators note, if a State fails to comply with UNCLOS obligations, only its "international responsibility" is engaged, with any remedy left to political or legal pressures.[104] Unlike domestic courts, ITLOS cannot compel compliance by force; it can only interpret the Convention and exhort states to fulfill their duties (e.g. by invoking UNCLOS Art. 192's general obligation to "protect and preserve the marine environment" and Art. 194(1)'s duty to take "all measures…necessary" against pollution). In contentious cases, a non-compliant state may simply ignore an ITLOS or Annex VII award, and there is no higher recourse under UNCLOS to enforce it.

Second, jurisdictional constraints limit the Tribunal's scope. ITLOS has compulsory jurisdiction only over disputes between parties that have accepted it (per UNCLOS Art. 287), and even then certain matters (e.g. fisheries, sea boundary delimitation) can be excluded under Art. 297. On the advisory side, ITLOS can only opine when authorized by UNCLOS or related agreements. For example, ITLOS's first full-Court advisory on climate was possible only because a treaty (the COSIS Agreement) allowed small island states to request an opinion. Similarly, the 2011 Seabed Disputes Advisory Opinion arose from a specific ISA Council decision under UNCLOS Art. 191. Absent such enabling instruments, ITLOS cannot initiate opinions on environmental issues by itself. Thus many environmental problems remain beyond ITLOS's reach unless states formally submit them. Moreover, states may choose different fora for disputes (e.g. ICJ or UNCLOS Annex VII arbitration), diluting ITLOS's role.

Many environmental cases require complex scientific assessments, making it difficult for ITLOS to render definitive rulings. In the *Advisory Opinion on Deep Seabed Mining (2011)*, ITLOS emphasized the obligation of sponsoring states to conduct rigorous environmental impact assessments. However, evolving scientific knowledge on the impacts of deep-sea mining presents challenges in establishing concrete legal standards.

[104] Rozemarijn J. Roland Holst, Taking the Current When It Serves: Prospects and Challenges for an ITLOS Advisory Opinion on Oceans and Climate Change, 32 REV. EUR., COMPARATIVE & INT'L ENV'T L. 217 (2023).

The Tribunal often relies on expert testimony, but inconsistencies in scientific findings can create ambiguity in legal rulings.

Third, the scientific uncertainty inherent in complex environmental issues complicates judicial resolution. ITLOS recognizes that decision-makers need not wait for "full scientific certainty" before acting, but applying vague or evolving science can still challenge adjudication. For instance, in the climate advisory opinion ITLOS expressly noted that it would be "inevitably" difficult to say anything definitive about compensation for climate-related marine damage, because "questions of causation and attribution" are "notoriously difficult" in the climate context.[105] Assessing whether a given emission contributes to harm involves complex models and contested hypotheses. Even when scientific consensus exists (e.g. IPCC reports on global warming), translating that into specific legal duties (beyond Article 194's due-diligence standard) can be fraught. ITLOS must therefore base its reasoning on the "best available science" and precautionary principles, but the inherent uncertainty means its pronouncements often remain general and cautious.

Fourth, political and strategic influences permeate environmental adjudication. Environmental cases frequently involve diffuse, high-stakes issues that intersect with states' national interests. In climate matters especially, the Tribunal's advisory work is viewed by some as politically charged. One scholar notes that because climate change is "politically sensitive," critics may see COSIS's request as part of a campaign for broader climate action and thus question whether a law-of-the-sea tribunal should entertain it.[106] In contentious proceedings, powerful states may resist rulings that threaten economic interests (as seen, for example, in past fishing and pollution cases). Political realities can thus hinder both the bringing of cases (states may avoid triggering disputes) and compliance after judgment. Even within the Tribunal, judges from diverse legal and national backgrounds may bring political perspectives to bear on how vigorously to interpret environmental duties. Consequently, ITLOS's work in environmental protection operates in a highly politicized arena, which can limit its authority and the acceptance of its findings.

[105] *Id.*
[106] *Id.*

To address these challenges, ITLOS must continue strengthening its engagement with scientific institutions, improving cooperation with regional organizations, and advocating for enhanced compliance mechanisms. As marine environmental threats such as climate change, pollution, and biodiversity loss intensify, ITLOS's role in maritime governance will become increasingly crucial. Strengthening its procedural mechanisms and expanding its jurisdictional reach could enhance its effectiveness in addressing contemporary environmental challenges.

3.7 ITLOS VERSUS OTHER UNCLOS DISPUTE MECHANISMS

ITLOS's environmental jurisprudence must be seen in the context of UNCLOS's broader dispute settlement regime (Part XV). Under UNCLOS, Parties may choose to submit disputes either to ITLOS, to the International Court of Justice (ICJ), or to arbitral tribunals (Annexes VII and VIII). In practice, for maritime and environment disputes the two most active fora have been ITLOS and Annex VII arbitration.

One key difference is jurisdiction: only ITLOS (and its Seabed Chamber) can issue advisory opinions under Article 191 – ICJ has no such UNCLOS mandate, and Annex VII arbiters cannot give advisory opinions at all. Likewise, provisional measures pending arbitration are available only through ITLOS (Art. 290(5)). This has made ITLOS a default forum for urgent marine-environment issues. For example, Australia and New Zealand could not approach an Annex VII tribunal for provisional relief in the SBT case; only ITLOS could hear their requests. Similarly, Ireland could not obtain provisional orders from an Arbitration tribunal against the UK's MOX operations; the only route was ITLOS. In this way ITLOS serves a special role: it can unilaterally act to "preserve…rights" or prevent "serious harm to the marine environment" without needing all parties' consent. Once the annexed arbitral tribunal is constituted, it takes up the merits; but ITLOS ensures the status quo pending that determination.

In terms of reasoning and reach, ITLOS's environmental rulings tend to emphasize cooperative, science-based precaution and enforcement obligations. By contrast, Annex VII arbitral tribunals (when they have been formed) operate on agreed disputes and have not typically focused on broad environmental mandates. For instance, after ITLOS's MOX Order, the Annex VII tribunal in Ireland v. UK (2006) eventually held that Ireland had not demonstrated an imminent threat of serious pollution, so it did not impose stricter interim restrictions. ITLOS's original stance – cooperative monitoring

and caution – was largely unchallenged in principle, but the arbitral tribunal required more evidence to justify further measures. Similarly, following the Johor Straits Order, Malaysia and Singapore submitted to Annex VII arbitration (the PCA arbitral award in 2005). That tribunal noted the studies and expert involvement mandated by ITLOS, and in its final award it emphasized compliance with the agreements and continued monitoring (essentially allowing Singapore's projects to proceed under supervision). In sum, ITLOS provisional measures often set the agenda (urgent protection and consultation), while arbitral awards have tended to refine or confirm details once full hearings are held.

Comparing to the ICJ: the Court's environmental jurisprudence (e.g. *Pulp Mills* on transboundary rivers[107], *Gabcíkovo-Nagymaros* on rivers) deals mainly with general principles of state responsibility and due diligence, but it has rarely been invoked under UNCLOS specifically. No State has yet sued another under UNCLOS Part XII in the ICJ. (The only recent related example is an advisory request to the ICJ on climate change itself by Vanuatu, but that is outside UNCLOS.) When maritime boundary or resource cases have reached ICJ (e.g. *Chile v. Bolivia* or *Guyana v. Suriname*), environmental questions have arisen only tangentially. By contrast, ITLOS was established as the "world court" of the oceans and has steadily developed specialised maritime-environment law. It addresses oceanic issues – deep seabed mining, strait passage, fisheries – within the UNCLOS framework. Its focus on Articles 192–194 and cooperation obligations has generally been as strong or stronger than that seen in general international court decisions.

Even within UNCLOS arbitral practice, ITLOS's environment-friendly stance is notable. For example, UNCLOS Annex VII tribunals often stress States' rights over resources (e.g. fishing quotas or pipelines) and look for negotiated solutions. ITLOS, using its expert registry and international membership, has been more willing to order independent environmental assessments and multilateral consultations to preserve resources and habitats. In *Southern Bluefin Tuna*, ITLOS insisted on strict catch limits (a conservation remedy) where an Annex VII tribunal might have been more reluctant. In *Land Reclamation*, ITLOS created a scientific commission – an instrument not contemplated by UNCLOS itself but devised ad hoc – to resolve environmental

[107] Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. Rep. 14 (Apr. 20, 2010).

uncertainty. Such proactive measures underscore ITLOS's comparative strength in environmental governance.

Overall, ITLOS's track record on environmental protection is complementary to that of the ICJ and arbitration. Its judgments and orders reflect UNCLOS's ecosystem approach and often advance norms of precaution and due diligence. Whereas ICJ and general arbitration rely on more conventional dispute remedies, ITLOS has shown itself willing to interpret UNCLOS obligations broadly in the environmental realm and to require cooperative oversight measures. This specialized emphasis helps fill gaps: for example, the climate change advisory opinion showcases ITLOS as a forum for clarifying ocean-related duties that neither ICJ nor any other UNCLOS body had addressed. In that sense, ITLOS performs a unique function in upholding UNCLOS's environmental mandate.

3.8 CONCLUSION

ITLOS has demonstrated that its environmental jurisdiction is robust and evolving. Through its orders and advisory opinions, the Tribunal consistently highlights that maritime rights come with environmental responsibilities. Through its rulings, the Tribunal has reinforced fundamental principles such as precaution, cooperation, and due diligence. However, challenges remain in ensuring compliance, addressing scientific uncertainties, and navigating political complexities. Whether through provisional measures or legal interpretations, ITLOS's jurisprudence gives concrete effect to UNCLOS's promise to protect the oceans. By comparison, other dispute mechanisms have contributed less directly to this goal. ITLOS's rulings therefore stand out as a vital tool for marine environmental protection within the UNCLOS framework. As environmental threats to the oceans continue to grow, ITLOS's role in safeguarding marine ecosystems will become increasingly vital.

CHAPTER 4
POLITICAL AND ECONOMIC INFLUENCES ON ITLOS

4.1 INTRODUCTION

The 1982 UN Convention on the Law of the Sea (UNCLOS) provides a system for compulsory dispute settlement (Art. 287) via ad hoc Annex VII arbitration, the International Tribunal for the Law of the Sea (ITLOS), or (where applicable) the International Court of Justice (ICJ). All States Parties must "comply with the decision of the court or tribunal" (Art. 292), but UNCLOS contains no direct enforcement mechanism (Art. 296) – only an obligation of good-faith compliance. Provisional measures (Art. 290) may be prescribed by ITLOS or a special chamber to preserve the status quo pending judgment. In practice, whether a losing party actually implements a decision depends heavily on political and economic factors. This chapter examines key cases under ITLOS, Annex VII arbitration, and ICJ to assess how power asymmetries shape compliance and to compare the strengths and limits of each forum in contentious maritime disputes.

4.2 ITLOS CASE STUDIES

4.2.1 Bangladesh/Myanmar (Bay of Bengal, 2012)

In the first-ever ITLOS maritime boundary case, Bangladesh sued Myanmar to delimit their territorial sea, exclusive economic zones (EEZ) and continental shelf in the Bay of Bengal. The Special Chamber delivered a unanimous judgment on 14 March 2012[108]. The tribunal found it had full jurisdiction, including beyond 200 nm, and resolved disputed legal points: in particular, it rejected Bangladesh's claim of a prior 1974 agreement on territorial sea limits, and it agreed to delimit the "single maritime boundary" from Point 1 to Point 9 by specific geodetic lines. The tribunal adopted a modified equidistance/angle-bisector method, taking into account St. Martin's Island, and provided precise coordinates for each turning point. Notably, the tribunal asserted jurisdiction over Bangladesh's claim for the shelf beyond 200 nm, meaning the boundary was final for all relevant zones. Both sides had accepted ITLOS jurisdiction

[108] Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, Bangladesh v Myanmar, Judgment, ITLOS Case No 16, ICGJ 448 (ITLOS 2012).

(via reciprocal declarations) and bound themselves to its award. In practice, the two states cooperated to implement the decision: for example, within a year Bangladesh submitted the award's coordinates to the UN Secretary-General under Art. 84, and Myanmar did not contest the tribunal's competence or outcome. The shared interests (e.g. fishing access, resource security) and relatively balanced power of the two states fostered compliance. As one analysis notes, "[i]n a relatively friendly context, Bangladesh and Myanmar faithfully carried out their obligations under the award," resulting in peaceful delineation of what had long been a disputed shelf.

4.2.2 Mauritius/Maldives (Indian Ocean, 2023)

Similarly, Mauritius and Maldives—two small island States—agreed in 2019 by special agreement to transfer an Annex VII arbitral claim to an ITLOS special chamber. On 28 April 2023 the Special Chamber issued its unanimous delimitation judgment.[109] It determined a single boundary line for their EEZs and shelves, connecting 53 points by geodetic lines. The Chamber found it had jurisdiction beyond 200 nm and dismissed Maldives' objections to Mauritius' claim to extended shelf, although it declined to delimit beyond the shelf extents in the Chagos region. In short, Mauritius' map of coordinate points was largely affirmed (points 1–38 in [40] were accepted). Both parties had acted in good faith: Mauritius sought a definitive border to ensure security for its vessels, and Maldives conceded after losing preliminary objections (the tribunal unanimously rejected all Maldivian jurisdictional objections). There is no indication that either country has resisted the award. To the contrary, they promptly accepted the decision, which clarified fishing rights and resource control on both sides. In practice, the line drawn has been drawn on nautical charts, and no reported incidents have arisen. This compliance reflects the fact that neither state is much larger than the other, and both recognized the benefit of legal certainty. Indeed, a recent news report observes that "[b]oth Ghana and Côte d'Ivoire[110] agreed to implement [their ITLOS] ruling" without incident (a similar outcome likely in Mauritius/Maldives). The Mauritius/Maldives award thereby shows that in non-contentious settings, ITLOS can achieve efficient, uncontested settlement of maritime boundaries.

[109]Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Judgment, (2022-2023) ITLOS Reports 10.

[110] Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean, Ghana v Côte d'Ivoire, Judgment, ITLOS Case No 23, ICGJ 533 (ITLOS 2017)

4.2.3 M/V "Saiga" (No. 2) (SVG v. Guinea, ITLOS 1999).

The Saiga II case arose under Part VI of UNCLOS and concerned enforcement and provisional measures. In December 1997 Saint Vincent and the Grenadines obtained ITLOS provisional measures ordering Guinea to release the vessel *Saiga* (a Grenadine-flag oil tanker) after payment of reasonable security. Guinea posted a bank guarantee by 10 Dec. 1997, but controversially kept the ship detained until 28 Feb. 1998 (an 80-day delay). In its July 1999 final judgment, the ITLOS Tribunal found that Guinea had acted wrongfully by detaining the ship in the first place, but it also held that the delayed release did not constitute a failure to comply with the provisional-measure order. The Tribunal noted that the Deed of Release explicitly cited the 1997 Order, and found that various factors (e.g. internal legal procedures) contributed to the 80-day delay – thus, in *all the circumstances*, Guinea had not "failed to comply" with Articles 292(4) and 296. Crucially, ITLOS stopped short of punishing Guinea; the ship and crew had eventually been freed, satisfying the key request. As to reparations, Saint Vincent sought major compensation, but ITLOS awarded only modest damages (about US$400,000 in cargo pollution costs plus small awards to crew) and rejected requests for flag-State revenue losses. In sum, the case shows that even a small State like Guinea may technically comply after initial resistance, especially when all Parties are UN members and the tribunal has moral authority. Saint Vincent's Government did obtain vindication of its rights, and Guinea quietly returned the *Saiga* and paid minimal damages (suggesting de facto compliance). The Tribunal's nuanced approach suggests that ITLOS can balance legal ideals against on-the-ground realities, and that cooperative small states will generally settle up (or at least not openly defy) after an ITLOS order.

4.3 Annex VII Arbitration Case Studies

4.3.1 South China Sea Arbitration (Philippines v. China, PCA Annex VII, 2016).

This politically sensitive dispute starkly illustrates how power asymmetry affects compliance. In 2013 the Philippines invoked UNCLOS Annex VII to challenge China's "nine-dash line" claims and related activities in the South China Sea. China refused to participate, but the tribunal proceeded and on 12 July 2016 issued a unanimous award in favor of the Philippines. The award held inter alia that China's historical claims had

no legal basis, that certain Chinese-built reefs were "rocks" (entitling only to 12 nm, not 200 nm), and that China had violated Philippine rights by interfering with fishing and petroleum operations. Importantly, the tribunal treated the 9-dash line as an excessive claim incompatible with UNCLOS, and invalidated it.

Despite the clear ruling, China immediately denounced the award as "null and void" and declared it would never implement it. A U.S.–China commission report notes that China "reacted negatively to the ruling, maintaining it was 'null and void,'" and hinted that China might take assertive steps to defend its claims. In practice, China has continued to build and militarize islands in the area (a direct defiance of the award), and has ignored repeated Philippine attempts at enforcement. The Philippines, for its part, first publicized the award, but then under President Duterte shifted to bilateral negotiations and refrained from internationalizing compliance. Within a year the Philippines had symbolically removed a grounded warship at Scarborough Shoal (a gesture taken by China's side to mean tacit acceptance of a status quo); but no restoration of Philippine fishing or oil rights occurred. By contrast, some other nations (e.g. the U.S., EU, Australia) have publicly supported the award's legal reasoning.

The South China Sea case thus shows that a major power need not honor an UNCLOS tribunal if its strategic interest is at stake. China's economic and naval superiority over the Philippines (and the region) meant that the tribunal's award carried little weight on the water. Even symbolic resolutions (e.g. UN General Assembly calls for compliance) have had no effect. In short, here political power overwhelmed legal obligation, with the award serving more as an international legal record than a rule to enforce. The case underscores a core limitation: Annex VII tribunals lack any arm of enforcement, so powerful States can simply ignore unfavorable outcomes (China's reaction being a paradigm. [111]

4.3.2 Chagos Marine Protected Area (Mauritius v. UK, Annex VII arbitration 2015)

The Chagos dispute is a colonial/post-colonial case with economic (fisheries) and political (self-determination) dimensions. In 2010 the UK declared a large "no-take" Marine Protected Area (MPA) around the Chagos Archipelago (British Indian Ocean

[111] Caitlin Campbell, South China Sea Arbitration Ruling: What Happened and What's Next?, Issue Brief, U.S.-China Econ. & Sec. Rev. Comm'n (2016).

Territory), contrary to the wishes of Mauritius (the former colonial ruler entitled to sovereignty upon UK withdrawal). Mauritius initiated Annex VII arbitral proceedings alleging procedural violations of UNCLOS (lack of consultation) and seeking annulment of the MPA. On 18 March 2015 (PCA case No. 2011-03) the arbitral tribunal issued its award. It unanimously found that the UK had breached its obligation to consult Mauritius (as co-claimant of the waters) before declaring the MPA. It held that although the UK could designate a conservation area, it could not do so in a way that nullified Mauritian fishing rights; Mauritius's rights under Annex V (fisheries) had been violated. The tribunal ordered that the MPA declaration be nullified (insofar as it affected Mauritian fishing) and that the UK ensure Mauritius' fishing rights "remain available".[112]

The tribunal thus crafted a compromise: it did not explicitly "cancel" the MPA, but it required the UK to amend it to allow Mauritian (and Chagossian) fishing. In its opinion, the UK had an affirmative obligation to guarantee fishing access. Nevertheless, the UK government publicly maintained that the award did *not* force termination of the MPA. In practice, the MPA remains in place; the UK has begun limited consultations with Chagossians, but has not fully undone the reserve. A recent commentary notes that "at the very least there will need to be compliance with the Arbitral Tribunal ruling" and suggests the MPA will be "reconfigured" to accommodate fishing rights. The UK's initial stance (partial defiance) again reflects power imbalance. Mauritius is economically smaller and has limited means to compel UK compliance. Unlike Bangladesh/Myanmar, Mauritius lacks leverage. Thus, while the UK has "implicitly" accepted that it may need to alter the MPA, it does not plan a wholesale revocation. In sum, the MPA case demonstrates that even when an Annex VII tribunal rules against a major power, implementation will be pragmatic and negotiated – full obedience is unlikely. The UK continues to cite environmental commitments as justification, and Mauritius can only press via UN advocacy or political channels (e.g. the 2019 ICJ advisory opinion on Chagos).

[112] Chagos Marine Protected Area Arbitration, Mauritius v United Kingdom, Final Award, ICGJ 486 (PCA 2015).

4.3.3 Ghana/Côte d'Ivoire (Atlantic Ocean, 2017)[113]

This Annex VII proceeding (ITLOS Special Chamber) involved two medium-sized West African States delimiting their Atlantic boundary. Ghana initiated the case in 2014. By unanimous 23 September 2017 judgment, the tribunal applied a modified equidistance line: it accepted much of Ghana's proposed line but shifted seaward to compensate Côte d'Ivoire's concave coastline. Significantly, the tribunal also addressed Côte d'Ivoire's claim for damages. It concluded that Ghana had indeed infringed on Côte d'Ivoire's rights by proceeding with drilling in disputed waters, and ordered Ghana to pay Côte d'Ivoire roughly **$46 million** (plus compound interest) as compensation. This was a landmark relief provision. Both parties participated fully and committed to abide by the award (they had negotiated the ITLOS forum by Special Agreement). In fact, Ghana carried out the ruling. By late 2020 Ghana deposited the ordered compensation (with interest) into a UN escrow account; the two states then implemented joint maritime patrols as agreed in the judgment. Media reports confirmed that "Ghana and Côte d'Ivoire agree to implement the ruling". In contrast to the China or UK cases, here the award was honored. The lack of a vast power disparity (each country is roughly comparable economically) and the mutual interest in regional stability ensured compliance. This episode shows that when the costs of non-compliance (damage payments, loss of investment stability) are manageable, even sizeable States will obey legal outcomes.

4.4 ICJ Involvement in UNCLOS Issues

Under Article 287(3) of UNCLOS, parties may choose the ICJ as forum for dispute resolution. In practice, UNCLOS-specific cases at the ICJ are rare, since most States prefer the specialized tribunals or ad hoc arbitration provided by UNCLOS itself. However, the ICJ has played a role in some Law of the Sea issues indirectly. For example, after the Chagos arbitral award, Mauritius sought an ICJ advisory opinion (2019) on decolonization and territorial integrity. The UK contends that, depending on the ICJ's conclusions, it might be obliged to "wipe out all the consequences" of an illegal act (the Chagos MPA)[114] – in other words, end the MPA and restore Mauritian rights. This illustrates the interplay: while the MPA dispute was finally decided under

[113] Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean, Ghana v Côte d'Ivoire, Judgment, ITLOS Case No 23, ICGJ 533 (ITLOS 2017).
[114] Sue Farran, Chagos and the ICJ – The Marine Protected Area, QIL-Intl. Law in Context (2018).

UNCLOS arbitration, the political ramifications of colonial law and self-determination are being canvassed at the ICJ. More generally, the ICJ's strengths are its universal acceptance and procedural safeguards, but its limitations include slower timelines and the requirement of special consent. Notably, some great powers (e.g. India, USA) have declarations withdrawing ICJ jurisdiction over maritime disputes, reflecting reluctance to risk defeat. Thus, in sensitive disputes powerful States often avoid the ICJ option altogether, preferring diplomatic talks or unilateral action.

4.5 Patterns of State Behavior and Power Asymmetry

From the above cases, clear patterns emerge. **Great Powers vs. Small Powers.** Stronger States are most likely to reject or dilute adverse rulings. China's dismissal of the South China Sea award and the UK's tepid compliance with the Chagos award are prime examples. In each, the losing State had little realistic leverage to compel the winner. In contrast, small or medium States generally carry out rulings, especially against neighbors of similar stature. Bangladesh and Myanmar (neither a superpower) accepted ITLOS's Bay of Bengal decision, as did Ghana and Côte d'Ivoire. Even relatively powerless small States complied with ITLOS orders (e.g. Guinea eventually releasing *Saiga*).

Economic Interests. Disputes involving valuable resources can heighten non-compliance. Ghana's compliance notwithstanding, large sums were at stake. China had massive hydrocarbon interests in the South China Sea and thus ignored the tribunal. The Chagos MPA also implicates fishing (and US military considerations), making the UK sensitive. Economic stakes embolden powerful States to flout rulings that threaten their access to wealth.

Reciprocity and International Opinion. When States share mutual interests or third-party pressure, compliance improves. In Ghana/Côte d'Ivoire and Bangladesh/Myanmar, both parties wanted a stable order and could appeal to ICC assistance or regional norms to ensure execution. In the South China Sea, however, many States (e.g. the U.S., ASEAN members) support freedom of navigation but lack standing to enforce UNCLOS awards. Their verbal support of the Philippines could not tip the balance. The example of Mauritius/Maldives shows how diplomacy helps: both nations gained by resolving boundaries, so neither had reason to balk.

Use of Provisional Measures. ITLOS's Article 290 power can induce compliance. For instance, in *Saiga* ITLOS' prompt provisional order (Dec. 1997) eventually resulted in the ship's release. The order and explicit connection to a UN court gave Guinea a face-saving means to release the vessel with a bond. Similarly, in Ghana/Côte d'Ivoire the 2015 provisional measures (declaring a moratorium on new drilling) helped focus the parties on peaceful resolution. By contrast, Annex VII and ICJ cannot prescribe provisional orders unless the parties have so agreed (nor do they handle urgent enforcement). Thus ITLOS's procedural advantage is real in preventing escalation.

4.6 Forum Selection under UNCLOS: ITLOS versus Annex VII Arbitration

Under UNCLOS Part XV, States may choose ITLOS, the ICJ, or Annex VII arbitration for disputes. If the parties' choice does not coincide (or no choice is made), Article 287(1) provides that Annex VII arbitration is the default procedure.[115] In practice many States have either not declared a preference or have incompatible preferences, so disputes commonly go to Annex VII tribunals.[116] Crucially, Article 298 affords an optional exception for disputes "concerning the interpretation or application of" Articles 15, 74, or 83 (maritime boundary delimitation) or "disputes involving historic bays or titles to territorial seas". Over thirty States, including China, Russia, and the United Kingdom, have invoked Article 298 to exclude from compulsory settlement disputes touching sovereignty or boundaries. Thus many sovereignty-sensitive or delimitation claims cannot be adjudicated unless both sides waive those exceptions.[117] For example, in *Philippines v. China*,[118] China's Article 298 declaration and its refusal to accept any UNCLOS tribunal forced the Philippines into Annex VII arbitration. Similarly, the Chagos MPA dispute[119] was brought to arbitration (the UK having no common forum with Mauritius), while ITLOS was never an option. In short, the UNCLOS choice-of-forum rules often leave Annex VII arbitration as the only

[115] Robert Beckman & Leonardo Bernard, UNCLOS Annex VII Arbitration, Paper presented at the 3rd MIMA South China Sea Conference: Promoting Sustainable Use of SCS in an Era of Dynamic Geostrategic Change, Kuala Lumpur, Malaysia (Sept. 2–3, 2014), https://cil.nus.edu.sg (last visited May 25, 2025).
[116] *Id.*
[117] Douglas W. Gates, Comment, International Law Adrift: Forum Shopping, Forum Rejection, and the Future of Maritime Dispute Resolution, 18 Chi. J. Int'l L. 287 (2017).
[118] South China Sea Arbitration, Philippines v China, Award, PCA Case No 2013-19, ICGJ 495 (PCA 2016).
[119] Chagos Marine Protected Area Arbitration, Mauritius v United Kingdom, Final Award, ICGJ 486 (PCA 2015).

available path in high-stakes sovereignty or boundary cases, since major powers frequently make declarations or decline ITLOS/ICJ jurisdiction.

Annex VII arbitration differs from ITLOS in key design features. ITLOS is a permanent tribunal of 21 elected judges, whereas Annex VII panels are ad hoc tribunals chosen for each case. ITLOS judges are selected by States Parties (one per State), and any party lacking a national on the bench may appoint an ad hoc judge (Art. 17 ITLOS). By contrast, each party to Annex VII arbitration generally nominates one arbitrator (from the UNCLOS list maintained by the UN Secretary-General) and the presiding arbitrator is chosen by agreement or by drawing from the list. In short, Parties have more influence over the composition of an Annex VII tribunal. ITLOS proceedings are public by default (with published hearings and judgments), whereas UNCLOS Annex VII proceedings are confidential unless the parties agree otherwise. Indeed, Annex VII Article 1(4)– (6) explicitly make tribunal documents "strictly confidential" and allow private hearings, which appeals to governments reluctant to subject strategic disputes to public scrutiny. ITLOS hearings (and fixed venue in Hamburg) offer little such privacy. States also perceive differences in procedural flexibility: an Annex VII tribunal can adopt procedures (language, timetable, provisional measures) tailored by party agreement, while ITLOS follows its Rules and fixed case schedule. Finally, although both ITLOS judgments and Annex VII awards are binding (UNCLOS Art. 293), enforcement ultimately depends on States' willingness to comply. In either forum, big powers have shown willingness to ignore adverse rulings. For example, after the 2016 *South China Sea* award (Annex VII), China flatly declared the award "null and void" and refused compliance.[120] ITLOS similarly has no direct enforcement arm. Thus, the perceived neutrality and party control of Annex VII tribunals – plus confidentiality – often make States prefer them over a permanent court when sensitive territorial or economic interests are at stake.

Politics and power dynamics loom large in forum choice. Major powers often block ITLOS by non-ratification or reservations. China, Russia, the United States and several Asian States made Article 298 declarations rejecting ITLOS for sovereignty/boundary matters. Conversely, smaller states with less political leverage have availed themselves of ITLOS. For instance, countries in West Africa (Ghana, Côte d'Ivoire), the Indian

[120] *Supra 111*

Ocean (Bangladesh, Myanmar, Mauritius, Maldives) and the Caribbean (Saint Vincent) have used ITLOS special chambers to delimit maritime boundaries. The power asymmetry is evident in cases like *Bangladesh/Myanmar* (ITLOS 2012) and *Ghana/Côte d'Ivoire* (ITLOS 2023): neither China nor the United States was involved, and both tribunals heard relatively equal parties. In contrast, disputes involving great powers or core sovereignty claims (e.g. China's Nine-Dash Line) have proceeded by one-sided arbitration or not at all. States also consider the prestige and impartiality of the judges. Chinese officials reportedly distrusted ITLOS in part because the Tribunal's president was Japanese. By choosing ad hoc arbitrators, States can appoint individuals acceptable to both sides (often former judges or scholars) and sometimes remove concerns about the bench composition. Such factors – plus the desire to isolate the dispute from domestic politics – often tip the balance toward arbitration in high-stakes cases.

The contrasting fates of maritime disputes in Annex VII tribunals versus ITLOS illuminate these dynamics. In *The South China Sea Arbitration* (Philippines v. China) the Philippines pursued an expansive challenge to China's "Nine-Dash Line" and island-building, but carefully avoided direct territorial claims.[121] The Annex VII Tribunal had no authority to decide sovereignty and so focused on maritime entitlements of low-tide elevations and the legality of Chinese activities. China's non-participation and its Article 298 reservation ensured ITLOS was never an option. The Tribunal eventually ruled largely for the Philippines, but China ignored the award. In the *Chagos MPA* arbitration (Mauritius v. UK)[122], Mauritius challenged the UK's unilateral 2010 creation of a Marine Protected Area around the Chagos Islands. The Tribunal explicitly disclaimed any power to determine sovereignty over Chagos – the heart of the dispute – and found the issue was outside its UNCLOS jurisdiction. It nevertheless assessed the MPA under UNCLOS Article 194 and concluded that the UK's actions violated Mauritius's rights (under the UK's post-independence undertakings).[123] Again, ITLOS was unavailable: the UK had not consented to ITLOS jurisdiction on this subject. These Annex VII cases show the limits of UNCLOS

[121] *Id.*
[122] *Supra 112*
[123] *Id.*

adjudication on sovereignty questions and underscore how states with major territorial claims avoid ITLOS altogether.

By contrast, ITLOS has adjudicated complex delimitation disputes involving significant resources, albeit between less powerful States. In *Bangladesh/Myanmar* (ITLOS 2012), the Tribunal set a single maritime boundary in the Bay of Bengal using a three-stage delimitation approach, joining with an earlier provisional line. Both parties accepted the award, demonstrating ITLOS's capacity to achieve lasting delimitation. More recently, Mauritius and Maldives (2023) asked an ITLOS special chamber to delimit their EEZs in the Indian Ocean. Despite multiple small islands and shifting baselines, the Tribunal delivered an equitable boundary, showing skill in technical delimitation. Likewise, in *Ghana/Côte d'Ivoire* (ITLOS 2023), the special chamber imposed a strict equidistance line (with minor adjustments) to divide offshore oil blocks; both countries ultimately implemented the line, indicating compliance even on sensitive economic interests. These ITLOS judgments exhibit a consistent reliance on UNCLOS principles (equidistance plus relevant circumstances) and suggest institutional competence. However, none of these cases involved the direct sovereignty claims of great powers. ITLOS's track record shows it can handle economically significant delimitation disputes among willing States, but its jurisprudence remains untested in cases where sovereignty itself is contested or where States refuse to appear.

In sum, UNCLOS's dispute-settlement regime and realpolitik shape forum choice. ITLOS's institutional constraints – notably its limited jurisdiction over sovereignty and the Article 298 carve-outs – mean it rarely hears disputes over territory per se. Annex VII arbitration thus becomes the forum of choice for coastal States challenging overlapping sovereignty-based claims or provocative unilateral actions (as in the South China Sea and Chagos cases), because it is the only available compulsory forum in such situations. Arbitration offers states greater procedural control and confidentiality, which appeal to parties in politically charged disputes. By contrast, ITLOS has demonstrated that it can competently resolve difficult maritime delimitation cases (Bangladesh/Myanmar, Mauritius/Maldives, Ghana/Côte d'Ivoire), but these have involved cooperative smaller states and natural-resource issues, not core sovereignty claims. ITLOS's potential to adjudicate "high-stakes" disputes would depend on whether major powers or powerful claimants ever consent to its jurisdiction; to date, they have preferred other avenues or have preemptively barred the Tribunal's

involvement. Thus the pattern of forum selection in sensitive UNCLOS disputes reflects both the legal limits of each tribunal and the political strategies of the States involved.

4.7 Recommendations for Improving Compliance and Effectiveness

To mitigate power-based non-compliance, the law-of-sea community should pursue both legal and diplomatic measures. First, strengthen good-faith obligations: States should be urged to incorporate UNCLOS dispute-settlement clauses in bilateral agreements, and to clarify in their domestic law that tribunal awards will be treated as binding. For example, legislative or executive commitments to comply with UNCLOS rulings would harden the reputational cost of defiance. Second, enhance transparency and reporting: The UN Secretary-General already registers maritime delimitations (Art. 84) and publishes them. It could also systematically report on the status of compliance with awards, naming States that refuse or partially ignore judgments. Public accountability (naming-and-shaming) by UN bodies and regional organizations can increase diplomatic pressure.

Third, encourage involvement of international institutions: Although Article 296 of UNCLOS bars coercive enforcement against sovereign acts, parties can resort to Chapter VII of the UN Charter if aggression or tension threatens peace. Coastal States could agree beforehand that egregious violations of maritime tribunals would be referred to the UN Security Council for non-military measures (diplomatic sanctions, embargoes on disputed resources, etc.). While unlikely between peers, consensus in the UNGA (as Mauritius gained for the Chagos ICJ request) can at least produce advisory opinions or resolutions condemning refusals. Similarly, regional bodies (ASEAN, EU, AU, etc.) should develop clear policies: for instance, ASEAN could adopt a collective stance that all members must respect UNCLOS awards. Such political-multilateral reinforcement can tip the balance for weaker parties.

Fourth, utilize incentives: In some cases, conditioning benefits on compliance might work. For example, trade or aid agreements could include clauses highlighting adherence to international law as a criterion. Donor or regional powers could withhold fisheries access or development assistance if awards are flouted. While controversial, conditionality – even if only implicit – adds a cost to defiance. Finally, improve accessibility and speed: Although tribunals under UNCLOS are already relatively

efficient, establishing an ITLOS-style appellate review (a standing appeals body) could reassure all parties of procedural fairness. Similarly, increased financing for ITLOS's case-handling capacity (and for legal assistance to poorer States) would encourage use of law rather than force.

In sum, UNCLOS's legal architecture is solid, but its efficacy depends on political will. By promoting a culture of compliance – through domestic guarantees, international monitoring, and diplomatic measures – the international community can give teeth to UNCLOS rulings even in cases where power asymmetry looms large.

4.8 CONCLUSION

The case studies demonstrate that in politically and economically charged sea disputes, stronger States often shrug off legal defeat (e.g. China in *South China Sea*, UK in *Chagos*), whereas smaller or equally matched States tend to honor verdicts (e.g. Bangladesh/Myanmar, Mauritius/Maldives, Ghana/Côte d'Ivoire). Annex VII arbitration and ITLOS are technically on equal footing, but the choice of forum can itself reflect power politics (opt-outs, venue tactics). ICJ offers prestige but little mandatory power under UNCLOS. Ultimately, the UNCLOS framework relies on the broader system of international relations: its strengths lie in legitimacy and detail, and its limitations lie in enforcement by the relative power of States. To improve compliance, UNCLOS parties and the UN should take proactive steps (diplomatic, economic and procedural) to ensure that even the great cannot ignore the verdicts of the sea.

CHAPTER 5
COMPARATIVE ANALYSIS WITH OTHER DISPUTE RESOLUTION MECHANISMS

5.1 INTRODUCTION

The traditional approach to dispute settlement regarding the law of the sea has historically relied on flexible, consent-based frameworks supported by various diplomatic methods.[124] UNCLOS establishes a multi-faceted dispute settlement regime that offers states several fora for resolving maritime disputes. Article 279 mandates that states resolve disputes through peaceful means, explicitly referencing article 33(1) of the UN Charter. Furthermore, Article 283 obliges states to "exchange views", implicitly prioritizing negotiation as the primary mechanism for dispute settlement.[125] UNCLOS establishes a compulsory dispute settlement regime that is triggered when member states cannot resolve conflicts using a "peaceful means of their own choice." The procedures governing this regime are contained in Part XV, Section 2 (Articles 286-296) of the Convention.[126] Article 287 of UNCLOS explicitly allows each State Party to choose one or more of four compulsory procedures – the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), an Annex VII arbitral tribunal, or an Annex VIII special arbitral tribunal. In practice, if states have not made such a choice or cannot agree, disputes default to Annex VII arbitration.

5.2 OVERVIEW OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS UNDER UNCLOS

UNCLOS Part XV, Section 2, provides four primary compulsory procedures for inter-State disputes "concerning the interpretation or application" of the Convention. These are (1) ITLOS; (2) the ICJ; (3) Annex VII arbitration; and (4) Annex VIII special arbitration. In addition, states may use diplomatic or quasi-judicial means (negotiation,

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[124] NATALIE KLEIN, *DISPUTE SETTLEMENT IN THE UN CONVENTION ON THE LAW OF THE SEA* (Cambridge Univ. Press 2005).

[125] Myron H. Nordquist et al., eds., United Nations Convention on the Law of the Sea 1982: A Commentary, *7* Cent. for Oceans L. & Pol'y 29,(2011).

[126] Julia Brower, Christina Koningisor, Ryan Liss & Michael Shih, UNCLOS Dispute Settlement in Context: The United States' Record in International Arbitration Proceedings (Yale L. Sch. Ctr. for Glob. Legal Challenges Working Paper, Dec. 2012).

mediation, conciliation, or special agreements) under Article 279 of the UN Charter (incorporated by UNCLOS) or Article 281 of the Convention itself. The following sections outline each mechanism.

5.2.1 International Court of Justice (ICJ)

The ICJ established in 1945 is the UN's principal judicial organ and can adjudicate UNCLOS disputes if jurisdiction is established. Under Article 287(1)(b) of UNCLOS, a State may accept ICJ jurisdiction "pursuant to the Statute of the ICJ"[127]. In practice this requires either an Article 287 declaration selecting the ICJ or a special compromissory agreement between the parties. Unlike ITLOS and arbitration, the ICJ is a generalist court with a panel of 15 judges serving nine-year terms. It does not have chambers specialized in maritime issues. ICJ proceedings are conducted under its Statute and Rules, which are formal and deliberative.

The competence of ICJ *rationae materiae* is very broad. The ICJ, being the principal judicial organ of the United Nations, is competent to consider all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force. On the other hand, the competence of ITLOS is confined to the interpretation or application of UNCLOS and related treaties.[128]

Historically, many ICJ cases have involved maritime delimitation or interpretation of maritime entitlements (for example, *Land and Maritime Boundary* (Cameroon v. Nigeria, 2002)[129], *Nicaragua v. Honduras* (2007)[130], *Romania v. Ukraine* (Black Sea delimitation, 2009)[131], and *Maritime Delimitation between Peru and Chile* (2014)[132]). In each instance, the Court applied UNCLOS principles (e.g. equidistance) and customary law to set boundaries. The ICJ can also handle other UNCLOS-related issues if jurisdiction exists. Its decisions are final, without appeal. A strength of the ICJ is its legitimacy and global recognition, but its drawbacks include potentially long delays, high cost, and a bench with broad mandates rather than specialized maritime expertise.

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[127] Julia Brower &et. All, *Supra 118.*
[128] Alexander Yankov, *The International Tribunal For The Law Of The Sea And The Comprehensive Dispute Settlement System Of The Law Of The Sea*, in THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA, 38 (PC Rao & R.Khan eds. 2001).
[129] Land And Maritime Boundary Between Cameroon And Nigeria, [2002] Icj Rep 303.
[130] Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea, Nicaragua v Honduras, Judgment, ICJ GL No 120.
[131] Maritime Delimitation in the Black Sea, Romania v Ukraine, [2009] ICJ Rep 61.
[132] Maritime Dispute, Peru v Chile, [2014] ICJ Rep 4.

States that have not made a UNCLOS declaration must agree case-by-case for the ICJ to hear a UNCLOS dispute, which can be a hurdle.

5.2.2 Annex VII Arbitration

Annex VII of UNCLOS prescribes an ad hoc arbitral procedure for disputes not otherwise settled. Any dispute may be submitted to Annex VII arbitration if the parties have not otherwise agreed on a forum. The PCA (Permanent Court of Arbitration) often administers such cases, though parties can also arrange their own registry. An Annex VII tribunal is typically composed of three arbitrators (one appointed by each party and a presiding arbitrator) unless the parties agree on a different number. Under Article 287 and Annex VII, proceedings follow rules adopted by the tribunal (UNCLOS model rules or UNCITRAL rules are common). Annex VII awards are binding and final (unless the parties had arranged an appeal beforehand, which is rare). Unlike ITLOS or ICJ, there is no permanent registry at a fixed location – each tribunal is constituted anew – but this also means parties have flexibility in selecting arbitrators and shaping the procedural rules and structuring the arbitration processs (subject to UNCLOS)[133]. Annex VII arbitration has been used in many high-profile UNCLOS cases: for example, the *South China Sea Arbitration* (Philippines v. China, 2016)[134] under UNCLOS articles on maritime entitlements where Philippines instituted arbitral proceedings against China due to disputes over maritime entitlements and territorial claims in the Soth China Sea. China adopted a position of non-acceptance, arguing that the tribunal lacked jurisdiction and that the case involved matters of sovereignty,falling outside the scope of UNCLOS.[135] Despite China's rejection, proceedings continued, and the tribunal ruled in favor of the Philippines on almost all issues. However, China rejected the ruling, declaring it "null and void" and continued its activities in the South China Sea, including militarization and land reclamation[136]; *the Bay of Bengal Delimitation*

[133] UNCLOS Annex VII. Art. 3 & 5.
[134] South China Sea Arbitration, Philippines v China, Award, PCA Case No 2013-19, ICGJ 495 (PCA 2016)
[135] Press Release. The South China Sea Arbitration (The republic of the Philippines v. The People's Republic of China. Press Release. 12 July 2016.
[136] Statement of the Ministry of Foreign Affairs of the People´s republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines. 12 July 2016.

(Bangladesh v. India, 2014)[137]and *Barbados v. Trinidad and Tobago* (EEZ delimitation, 2006)[138].

Annex VII proceedings are generally confidential by default (unlike ITLOS), unless the parties choose to publish documents. A key advantage of arbitration is its flexibility and confidentiality – states can tailor procedures, select expert arbitrators, and keep sensitive issues private. However, tribunals can only be constituted with the consent (or failure to object) of both parties, and there is no overarching enforcement mechanism beyond UNCLOS Article 296's compliance obligation.

5.2.3 Annex VIII Special Arbitration

Annex VIII establishes special arbitration for certain subject-matter disputes *specified in Annex VIII*. Article 1 of Annex VIII lists disputes concerning "fisheries, protection and preservation of the marine environment, marine scientific research, and navigation"[139]. In practice, this means that if a dispute falls within one of those categories (for example, a dispute over marine pollution or a straddling fish stock) and the parties have submitted to Annex VIII, the matter goes to a special five-member arbitral tribunal under Annex VIII procedures. Unlike Annex VII, which can handle almost any UNCLOS issue, Annex VIII is narrowly drawn to specific areas, many of which are within Part XII on marine environment or Part VII on fishing. The only major case under Annex VIII has been the *MOX Plant Case* (Ireland v. UK), concerning nuclear material transport (fisheries/environment). Ireland sought provisional measures in ITLOS, and the case then proceeded as a special Annex VIII arbitration (Case No. 10, PCA 2002-01). As with Annex VII, the Special Arbitral Tribunal's award is final. One strength of the Annex VIII route is that it brings in arbitrators listed as experts in the Annex VIII fields (UNCLOS requires each party to maintain lists of experts for those topics). However, Annex VIII has rarely been invoked in practice, and it is subject to the same Article 287 elections and Article 298 exceptions as other UNCLOS dispute procedures.

[137] Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Bangladesh v India, Final Award, ICGJ 479 (PCA 2014).
[138] Barbados v Trinidad and Tobago, Award, (2006) 45 ILM 839, ICGJ 371 (PCA 2006).
[139] Julia Brower, Christina Koningisor, Ryan Liss & Michael Shih, UNCLOS Dispute Settlement in Context: The United States' Record in International Arbitration Proceedings (Yale L. Sch. Ctr. for Glob. Legal Challenges Working Paper, Dec. 2012)

5.2.4 Diplomatic Means (Negotiation, Mediation, Conciliation)

Separate from the compulsory Part XV processes, UNCLOS (and general international law) encourage peaceful settlement by mutual agreement. Article 279 of UNCLOS and Article 2 of the UN Charter permit negotiation, inquiry, mediation, and conciliation at any time. Article 286 UNCLOS explicitly allows parties to resort to any peaceful means before triggering compulsory procedures. Thus, states often negotiate or engage in informal mediation to solve disputes (e.g. bilateral discussions on maritime boundary or fishing access).

Conciliation is a process where states mutually agree to resolve a dispute through a conciliation commission who proposes recommendations to settle the issue. Annex V to UNCLOS establishes conciliation as one formal non-binding procedure.[140] Article 284 provides that a conciliation commission (appointed by the parties and often chaired by an ITLOS judge) will investigate and recommend a settlement. Importantly, the commission's report and recommendations are only advisory. Conciliation "strikes a compromise between third-party settlement and non-binding decisions," and UNCLOS makes conciliation compulsory for certain disputes (e.g., fisheries and marine research under art. 297(2), or maritime delimitation where States have opted out of arbitration per art. 298(1)(a))—yet in all cases the outcome "remains non-binding."[141] The most prominent example of compulsory conciliation, and, as of 2025, the only instance where the procedure has been successfully applied, is the case between Timor-Leste and Australia[142]. Following prolonged and fruitless negotiations, Timor-Leste initiated compulsory conciliation proceedings under Annex V, Section 2 of UNCLOS. Although Australia had excluded itself from binding arbitration or judicial settlement in matters concerning maritime boundaries, such disputes remain subject to compulsory conciliation, which Timor-Leste effectively invoked. This process ultimately resulted in the conclusion of a new maritime boundary treaty in 2018, thereby bringing the dispute to a resolution[143]

Despite under-use, conciliation offers recognized advantages. Conciliation process is highly flexible, parties may tailor procedures and even allow the commission to go

[140] UNCLOS. art. 284, Annex V.
[141] Stina Nighy, Dispute Settlement in Maritime Law: The Effectiveness of the International Tribunal for the Law of the Sea in Resolving Maritime Disputes, at 11–12 (B.A. thesis, Lund Univ. 2024).
[142] Timor Sea Conciliation (Timor – Leste v. Australia) 2016-2018. PCA Case No: 2016- 10.
[143] Stina Nighy, *Supra 141*

"beyond the request of the parties", and it can play an "even more important" role in the Law of the Sea dispute system because conciliation is collaborative rather than adversarial, its recommendations typically enjoy higher compliance and lower political cost than a court judgment.[144]

Thus, under UNCLOS conciliation complements ITLOS and other binding avenues. While an ITLOS judgment is decisive, a conciliation report can bridge political gaps and preserve each State's consent. In general, diplomatic methods offer the greatest flexibility and control to states (procedures are ad hoc or voluntary, without binding force unless agreed), but they may fail to resolve disputes if political or legal differences are entrenched. These methods lie outside the judiciary framework and will be discussed in terms of political dynamics below.

5.3 KEY COMPARATIVE CRITERIA

5.3.1 Jurisdictional Scope

All formal UNCLOS tribunals have jurisdiction over disputes concerning "the interpretation or application" of the Convention (Article 287). In principle, this means boundary delimitation, rights in maritime zones, environmental obligations, navigation rights, fishery issues, etc. However, UNCLOS also contains exceptions and opt-outs. Article 297(1) excludes from compulsory proceedings disputes over marine scientific research in the Area, navigation through straits used for international navigation, and measures to prevent passage of nuclear, radioactive, or other inherently dangerous substances (except as provided in Parts XII–XIII). Article 298(1) allows states to declare that they will not accept compulsory procedures for certain categories: (a) maritime boundary delimitation; (b) military activities; (c) matters put on UN Security Council agenda.[145] Notably, India, China, the United States and others made broad Article 298 declarations (often including delimitation and military matters), effectively excluding those issues from ITLOS/Annex VII if challenged. Thus, the scope of each forum can vary by State.

In practice, ITLOS's jurisdiction is as broad as UNCLOS allows (subject to those exceptions). It has compulsory jurisdiction in some urgent cases. For boundary and

[144] Limin Dong, A Comparative Analysis of Compulsory Conciliation under the UNCLOS, 1 *Mar. Dev.* 53, 53–61 (2023).
[145] Julia Brower & et. All., *Supra 139*, at.2

fisheries disputes, ITLOS shares jurisdiction with arbitration and ICJ (unless excluded). ICJ's jurisdiction depends entirely on the parties' consent (via declaration or special agreement); it is not limited by UNCLOS wording except by the same Article 297/298 choices if the treaty is invoked. Annex VII tribunals likewise have broad jurisdiction unless the parties have opted out. Annex VIII covers only the specified categories; a dispute outside those subjects cannot go to a special tribunal (but could go to ITLOS/Annex VII).

Finally, some disputes may be better addressed outside Part XV altogether (Article 282): if parties have a separate treaty or agreement with its own dispute clause, that forum would take precedence. For example, resource-sharing or delimitation treaties have often been used in lieu of UNCLOS mechanisms.

5.3.2 Access and Standing

All UNCLOS judicial or arbitral forums are limited to States. Article 288 makes clear that only States Parties may institute proceedings. Non-state entities (companies, NGOs, vessels) cannot directly sue or be sued under Part XV. The only non-State parties occasionally involved are limited (e.g. the International Seabed Authority or "Enterprise" in disputes over the Area, but even then, they act as State parties or as part of States' claims). Thus, access and standing are essentially the same for ITLOS, ICJ, and Annex tribunals: any disputant must be a State Party to the Convention (and to the relevant forum). One difference is that ITLOS (unlike ICJ or arbitration) offers unilateral access in certain contexts: for example, *any* State Party can request provisional measures (Article 290(5)) or prompt release (Article 292) without needing the other side's consent.[146] Similarly, Article 133 of UNCLOS allows a vessel's flag State to bring a prompt release case in ITLOS unilaterally. In contrast, ICJ and Annex VII require mutual consent or default procedure to get jurisdiction. In summary, while all formal fora are State-centric, ITLOS provides easier access for certain interim or summary claims[147], whereas ICJ/arbitration access depends on prior declarations or agreement.

[146] A Guide To Proceedings Before The International Tribunal For The Law Of The Sea, 2016
[147] *Id.*

5.3.3 Procedural Flexibility and Formality

The fora differ markedly in rules and structure. **ITLOS** is a permanent international court with fixed Rules of the Tribunal. Proceedings typically follow a two-phase (written pleadings then oral argument) approach (Rules 24–34), and are public. ITLOS permits special chambers (permanent or case-specific) – for example, the Fishery Chamber, Marine Environment Chamber, Delimitation Chamber, or a Chamber of Summary Procedure[148] – if parties so request. These features offer flexibility: parties can tailor their process (e.g. form a special chamber under Statute art. 15(2)). ITLOS also has summary procedures: e.g. Article 15 of the Statute allows a request for prompt judgment (used, for instance, in prompt-release cases) or an abridged procedure. The Tribunal's practice is characterised as "civil law" in style, with submission of extensive written briefs and detailed public documentations.

By contrast, ICJ procedure is generally more formal and slower. The ICJ follows its own Statute and Rules: there are no separate chambers (each case is heard by the full bench or an ad hoc bench as agreed). The ICJ's case schedule is fixed by the Court, and pleadings and oral argument are often spaced over months. The ICJ does not have a "summary" or expedited track in the UNCLOS context. Moreover, unlike ITLOS, the ICJ cannot constitute a panel of specialists; all judges hear all cases (though ad hoc judges can be chosen by parties in contentious cases). ICJ proceedings are also public and written in English or French, but the Court's procedure is considered rigid and less adaptable to technical subjects.

Annex VII arbitration is the most flexible procedurally. Each tribunal can adopt its own rules: the parties often choose UNCLOS Arbitration Rules or UNCITRAL rules, and can adjust procedural steps. There is no standing secretariat or courtroom; hearings are held in agreed locations or via videoconference. The number and selection of arbitrators is controlled by the parties (each side names one arbitrator, the presiding arbitrator is either nominated by agreement or chosen by lot or appointing authority). Parties can also stipulate confidentiality provisions (though UNCLOS does not require privacy). Arbitration typically involves only a few months for written submissions and a few days of hearings – it can be quite speedy if parties cooperate (for example, the Philippines–China tribunal completed submissions within a year and issued an award

[148] *Id* , p 6

within roughly three years from filing). On the other hand, without a fixed schedule, arbitration can also suffer from delays if parties do not agree on panelists or rules.

5.3.4 Timeliness and Efficiency

In practice, ITLOS is known for expeditious handling of urgent matters. The Tribunal has mandatory timeframes for provisional measures and prompt-release cases: Article 290(5) requires it to consider interim measures "with the greatest expedition," and its Order in *M/V Louisa* was delivered in about one month. In fact, ITLOS's Statute obliges it to decide provisional measure requests without delay, typically within weeks. Prompt-release cases under Article 292 are resolved very quickly – often in a matter of months after institution. On the merits, the Tribunal is also relatively fast: formal judgments have often been issued within two to three years of filing (for example, the Bay of Bengal case was instituted in 2012 and resolved the same year, albeit by agreement). The standing infrastructure and permanent judges help ensure continuity and quicker timelines.

By contrast, ICJ proceedings tend to be slower and more protracted. From application to judgment, an ICJ case commonly takes five to seven years (if not longer). The need to complete exhaustive written pleadings and multiple rounds of submissions, plus yearly vacations, means cases move at a leisurely pace. For instance, the ICJ *Maritime Delimitation (Bangladesh v. Myanmar*) case took from 2009 to 2012, and delimitation cases like *Cameroon v. Nigeria* (2002) spanned over a decade (started 1994). Moreover, because ICJ jurisdiction requires consent, some cases only proceed after long negotiations or provisional arrangements. The ICJ does not have a formal method for expediting hearings except via provisional measures (which it may grant under its own Article 41).

Arbitration timeliness is variable. On one hand, ad hoc tribunals can move quickly once constituted: they are not bound by a fixed case queue and can schedule hearings as soon as parties are ready. The South China Sea Annex VII tribunal, for example, completed its award roughly three years after initiation, which is relatively fast for a multi-party boundary dispute. On the other hand, forming an Annex VII tribunal can take time if parties disagree on arbitrators; filling vacancies (if a party fails to nominate an arbitrator) may require default appointment by the PCA Secretary-General. In extreme cases, disagreements have stalled tribunals for years. Once formed, however, UNCLOS

arbitration tribunals often issue decisions within a few years. Without a permanent body, there is no built-in mechanism to accelerate time (unlike ITLOS's one-month mandate for interim relief). Overall, ITLOS is generally faster for urgent and moderately complex cases, whereas ICJ is typically the slowest, and arbitration is intermediate depending on party cooperation.

5.3.5 Costs and Accessibility

The financial and logistical burdens of dispute settlement can influence states' choices. All fora can be expensive: legal representation, experts, and travel costs accumulate rapidly. ITLOS provides some cost mitigations. Under Article 34 of its Statute, the Tribunal may ask the UN Secretary-General to establish a trust fund to assist developing States with case expenses (fees of counsel, travel, accommodation, translations, etc.)[149]. Indeed, the International Tribunal for the Law of the Sea Trust Fund was established by the UN and has helped low-capacity States pursue cases at ITLOS.[150] This Trust Fund makes ITLOS more accessible to poorer parties. By contrast, there is no specific UNCLOS-funded scheme for arbitration or ICJ cases. Developing States may rely on their own budgets or international aid. (The ICJ does have a Voluntary Fund for Legal Assistance, which has been used by some poor states in UNCLOS disputes, but that Fund is general to all ICJ cases, not UNCLOS-specific.)

Arbitrations usually incur separate administrative fees (paid to PCA or the chosen institution) and each party generally pays its arbitrator's fees and a share of the presiding arbitrator's fee. These can be substantial. There is no equivalent "sea water" trust fund for arbitration under UNCLOS. Hence, for some developing parties, ITLOS may be relatively cheaper or better supported. For example, Pacific island States have turned to ITLOS (often with assistance from donors) for cases like prompt release of vessels.

For States that did not ratify UNCLOS or made heavy Article 298 declarations (like the United States under certain categories), cost is moot because they will not resort to these fora at all. In summary, ITLOS is comparatively more accessible to small or developing States, whereas ICJ and arbitration can be cost-prohibitive without external support.

[149] Walter Elochukwu Abah & et. All., Comparative Costs and Financing of Permanent Dispute Settlement Mechanisms, N.Y.U. Sch. L. Pub. L. & Legal Theory Res. Paper Series, Working Paper No. 22-37 (2022).
[150] A Guide To Proceedings Before The International Tribunal For The Law Of The Sea, 2016

We note, however, that all UNCLOS dispute procedures operate on the principle that each party bears its own costs unless a tribunal orders otherwise.

5.3.6 Binding Nature and Enforcement of Decisions

Under UNCLOS, awards and judgments in all compulsory tribunals are legally binding and final on the parties (Article 290(4), Article 296). ITLOS, the ICJ, and Annex VII/Annex VIII tribunals therefore all produce binding decisions that States are obligated to implement in good faith. (ICJ judgments traditionally have final authority under Article 94 of the UN Charter, and ITLOS awards likewise under Article 296 of UNCLOS.) However, none of these bodies has a direct enforcement arm. There is no UNCLOS-provided enforcement mechanism analogous to a domestic court's police power. Instead, compliance depends on states' willingness and the political will of the international community. If a party refuses to comply, the prevailing party may seek recourse to the UN Security Council under Article 94 (for ICJ judgments) or Article 290(5) (if provisional measures were ignored before an arbitration was constituted). In practice, enforcement has been uneven.

For example, in *Southern Bluefin Tuna* (ITLOS, 1999)[151], Japan complied with ITLOS provisional measures to restrain certain fishing – possibly due to strong international pressure and parties' treaty obligations. In the ITLOS *Bay of Bengal delimitation (Bangladesh/Myanmar)* 2012[152], both states promptly accepted and implemented the agreed border.[153] By contrast, in the *Arctic Sunrise* case (ITLOS 2013 Order), Russia ignored ITLOS's provisional measures to release a detained vessel and crew[154]. Similarly, after the UNCLOS Annex VII tribunal (2015) held Russia in breach and awarded damages for the Arctic Sunrise detention, Russia declined to pay. The Netherlands eventually had to resort to domestic measures (seizing Russian assets) to pressure compliance. Thus, while all UNCLOS courts are formally binding, the enforceability of their outcomes often reflects power dynamics. Smaller or less powerful states usually comply (often out of acquiescence or bilateral arrangements), but powerful states have more options to resist.

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[151] Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan) case No.3- 4.
[152] Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, Bangladesh v Myanmar, Judgment, ITLOS Case No 16, ICGJ 448 (ITLOS 2012).
[153] Jared Bissinger, The Maritime Boundary Dispute Between Bangladesh and Myanmar: Motivations, Potential Solutions, and Implications, 10 ASIA POL. 103-142 (2010).
[154] The "Arctic Sunrise" Case (Kingdom of the Netherlands v. Russian Federation) Case No. 22

An additional nuance is that ICJ has an optional appellate procedure only if all parties agree in advance (Article 57 of the ICJ Statute). The UNCLOS Part XV tribunals (ITLOS and Annex VII) do *not* provide for appeals – their decisions are final. ICJ's judgments also have a global stature due to the UN system. In sum, all fora produce final, binding decisions, but enforcement depends on politics and Article 94–290 mechanisms. ITLOS's and ICJ's public rulings often carry moral weight, whereas arbitration awards (if kept confidential) may face stealthier non-compliance.

5.3.7 Transparency vs. Confidentiality

ITLOS hearings and documents are generally public. The Tribunal holds open hearings, publishes records and judgments, and encourages transparency. This openness can build legitimacy and public accountability: for example, transcripts and summaries are available on the ITLOS website. By contrast, Annex VII arbitration is inherently private unless the parties agree otherwise. Most UNCLOS arbitration cases keep filings and awards confidential (though some arbitrations – like the PCA tribunals – have voluntarily published redacted versions of awards). The South China Sea Award was released only because the PCA's rules allowed the Philippines to publish it, but many other arbitrations remain unpublished. Confidentiality can be an advantage for states with sensitive disputes (e.g. great power intelligence or proprietary data) who might avoid ITLOS for this reason. ICJ proceedings are public, but again, only if the case comes before the Court (and both parties must agree to that forum).

Thus, ITLOS and ICJ generally operate in the public eye, promoting openness, whereas arbitration offers privacy. This difference affects state preferences: some choose arbitration for confidentiality. However, it also means that jurisprudence from arbitration is less visible, whereas ITLOS and ICJ decisions contribute openly to international law. Notably, UNCLOS requires that Annex VII awards "be deposited" with the UN Secretary-General (Article 292), so in theory they could be disseminated, but in practice most are not public.

5.3.8 Expertise and Specialization

ITLOS was created as a specialized tribunal of maritime law. Its 21 independent judges are elected from around the world, each being experts in international law (often with a maritime background). ITLOS can form chambers of experts (e.g. Maritime Delimitation Chamber) at the parties' request. This means ITLOS panels tend to have

strong technical and legal expertise in ocean matters. By contrast, the ICJ judges cover the whole spectrum of international law; they are not maritime specialists (though they may have broad legal acumen). While ICJ's bench is prestigious, its members juggle all fields of public international law.

In arbitration, the parties select arbitrators, usually aiming for technical expertise or credibility. For instance, in the *South China Sea arbitration* each side chose professionals well-versed in maritime or international law. Annex VII tribunals thus can be very expert (if parties pick specialists), but there is no institutional continuity across cases. In arbitration there is also provision (Annex VIII art. 1) for appointing arbitrators from an "expert" list in fisheries, environment, etc. However, this only applies in special arbitration.

In short, ITLOS's specialization is often seen as an advantage for complex maritime disputessaramitchell.org. The standing bench and chambers mean that parties appear before jurists deeply familiar with UNCLOS. Some commentators note that the ICJ lacks this specialization: as Powell and Mitchell observe, "Civil law countries are more likely to select the ICJ… whereas common law countries prefer arbitration"[155], suggesting that the Court's generalist nature aligns more with certain legal cultures. Arbitration falls in between: parties can hire experts, but without a permanent cadre.

5.4 Institutional Strengths and Weaknesses

Combining the criteria above, we can summarize the strengths and weaknesses of ITLOS relative to ICJ and arbitration:

Strengths of ITLOS:

- Specialization: Judges with maritime expertise and the option of special chambers make ITLOS well-suited to technical UNCLOS disputes.
- Speed for urgent cases: Compulsory interim jurisdiction (Arts. 290(5), 292) allows immediate relief (e.g. prompt release of vessels) within roughly one month.

[155] Emilia Justyna Powell & Sara McLaughlin Mitchell, Forum Shopping for the Best Adjudicator: Dispute Settlement in the United Nations Convention on the Law of the Sea, 9 J. Terr. & Mar. Stud. 7 (2022).

- Institutional continuity: As a permanent court, ITLOS provides a stable forum with established procedures and locations, avoiding delays in tribunal formation.
- Accessibility: The Trust Fund reduces financial barriers for developing States. ITLOS's openness and standing also give it reputational authority.
- Transparency: Public hearings and published decisions contribute to the development of UNCLOS jurisprudence.
- Procedural innovations: Its Chambers (e.g. summary procedure, delimitation chamber) offer flexibility.

Weaknesses of ITLOS:

- Limited jurisdiction by state choice: Many states exempted delimitation, fisheries, and military disputes from compulsory coverage (Art. 298), which weakens ITLOS's applicability to some key UNCLOS issues (e.g. Article 298 declarations by China/US).
- Enforcement: Like all international courts, ITLOS has no police power; compliance depends on states' goodwill. High-profile non-compliance (e.g. Arctic Sunrise) shows its vulnerability.
- Political sensitivities: Some states distrust ITLOS for political or sovereignty reasons, fearing external adjudication. This has limited its case docket (only ~30 cases in 30 years).
- No appellate review: ITLOS decisions are final, which some see as a disadvantage if law evolves. (By contrast, ICJ theoretically allows agreed appeals.)
- Less prestige or weight: Compared to the UN's ICJ, ITLOS is newer and less integrated into the global judicial system.

Strengths of ICJ (relative to ITLOS):

- Global legitimacy: ICJ judgments carry UN imprimatur and are widely respected.
- Broad jurisdiction (with consent): Not limited to specific treaty categories; can decide any matter brought under general international law or treaty.
- Well-established procedures: Its case law and process are mature.

- Appellate possibility: Optional appellate bench (if parties agree beforehand) provides for review.

Weaknesses of ICJ:

- Slower and more formal: Cases take longer and are less tailored to maritime specifics.
- Lack of specialization: Judges are generalists. (As Powell/Mitchell note, civil-law states like ICJ for its familiarity but common-law states find it rigidsaramitchell.org.)
- Consent needed: States must agree in advance or per dispute, which means UNCLOS disputes only come if both parties are willing. Many UN Member States have not made declarations accepting ICJ for UNCLOS issues (only ~18 states have done so by 2016).
- No funding support: Less accessible for poorer states without additional assistance.

Strengths of Annex VII Arbitration:

- Flexibility: Procedures and tribunal composition can be tailored to the case.
- Confidentiality (if desired): Useful in sensitive cases.
- Widely used by states: The ease of default referral (if no Article 287 choice or if negotiations fail) means Annex VII is a “default” mechanism.
- Acceptance by major powers: Because it is ad hoc and less permanent, some powerful states (e.g. China) still accept Annex VII by default, even if they disavow ITLOS for some issues.

Weaknesses of Annex VII Arbitration:

- No standing tribunal: Time is lost forming each new tribunal if parties do not cooperate.
- Cost: Potentially expensive (no trust fund).
- Finality: No appellate review (as with ITLOS).
- Dependence on cooperation: Without a fixed process, parties can stall by refusing to appoint arbitrators.

5.4.1 Analysis of State Behavior and Preferences

Scholarly studies show that states' choices reflect legal traditions, power, and diplomatic strategy. Common law countries tend to favor arbitration (the "multiplicity of options") and often resist the ICJ[156]. Civil law countries more often accept compulsory ICJ jurisdiction, and are somewhat amenable to ITLOS and Annex arbitration[157]. Empirical data confirm that, as of 2016, more States had opted for ITLOS (35) and arbitration (28) than for ICJ (18) in their Article 287 declarations. Thus, many developing states and some developed states have signaled preference for ITLOS or Annex VII over the ICJ.

Specific cases illustrate these patterns. *Malaysia v. Singapore (Land Reclamation)* was brought to ITLOS (Case No. 12, 2003) because Malaysia had accepted ITLOS jurisdiction and wanted rapid relief – Singapore had also made a reciprocal declaration. By contrast, the Bay of Bengal maritime boundary was resolved by both ITLOS (*Bangladesh v. Myanmar, 2012*) and Arbitration (*Bangladesh v. India, 2014*); Bangladesh had opted for ITLOS (and was able to form a joint chamber), while India had not made an Article 287 declaration, so that dispute went to Annex VII. The *Philippines v. China (South China Sea)* case went to Annex VII arbitration because China opted out of dispute settlement on maritime delimitation and China refused ITLOS jurisdiction. In *Arctic Sunrise*, the Netherlands had accepted ITLOS jurisdiction and invoked it for provisional relief, but Russia had an Article 292 reservation for fisheries (used as a pretext) and later refused ITLOS's order, forcing recourse to Annex VII. These examples show states "forum-shop" based on treaty elections and perceived advantage: smaller or middle powers often choose ITLOS for its speed and fairness (e.g. Malaysia, Bangladesh, St. Vincent & the Grenadines in vessel release cases), while major powers may avoid ITLOS and push defaults to arbitration or negotiate bilaterally.

5.5 Practical Considerations and Political Dynamics

Aside from formal law, political and economic power deeply influence forum choices. Powerful states may resist binding dispute settlement altogether or limit it. For instance, China's refusal to accept UNCLOS compulsory jurisdiction over many claims (via

[156] Powell & Mitchell, *Supra 155*
[157] *Id.*

Article 298) effectively shut the door on adjudication of South China Sea claims. Likewise, the United States, when debating UNCLOS, stated it would seek Article 298 exemptions on delimitation, potentially precluding ITLOS/ICJ resolving maritime boundary disputes with the US. In practice, this means that disputes involving great powers often cannot proceed if those powers object.

Conversely, smaller or economically weaker states often favor adjudication as a way to balance power. Islands and developing coastal states frequently make UNCLOS declarations accepting ITLOS or arbitration, and can even secure outside funding for cases. Transparency and neutrality of ITLOS may appeal to them. By contrast, entrenched major powers sometimes prefer diplomatic bargaining or keep disputes out of court. *The Arctic Sunrise* case is illustrative: Russia viewed the Greenpeace protest as an internal matter, refused to recognize ITLOS authority, and paid no heed to the Tribunal's order. Only through an Annex VII arbitration and subsequent commercial pressure (seizing assets) did the Netherlands finally secure compensation.

Perception of neutrality and legitimacy also matters. ITLOS's geographic diversity (judges from all continents) and independence promote a sense of fairness, but some critics note that small-court collegiality could breed uniformity. The ICJ's international prestige is high, but some developing states view its bench as dominated by major powers (though both ITLOS and ICJ judges serve in individual capacities, not as representatives). Arbitration allows appointment of arbitrators from one's own legal tradition, which can lend confidence but also suspicion of bias. In the Philippines–China case, for example, China objected that one Philippines-appointed arbitrator was Chinese (he later resigned), and China completely refused the tribunal's legitimacy.

States also use forum selection strategically. They may rank choices in their UNCLOS declaration (a right explicitly allowed by Article 287) to "forum shop." For example, a state might list Annex VII first (hoping the other will block the ICJ) and ITLOS second. States have used the threat of litigation to press negotiations (the "court's shadow" effect). In some cases, overlapping claims lead parties to tailor access: if both sides chose ITLOS, a case is likely; if not, the only path is Annex VII. This was evident when Bangladesh had declared for ITLOS but India had not: Bangladesh thus pushed for ITLOS involvement, but India insisted on arbitration. Finally, peripheral strategies

occur, such as forming partial agreements: two States might agree to settle certain issues by ITLOS while others remain unresolved, thus compartmentalizing disputes.

In short, forum choice is rarely a purely legal matter. It is entwined with power, trust, and strategy. States will pick the venue that they believe is most advantageous, balancing legal expertise against political control. This often means that technically complex, less politicized disputes (fisheries quotas, marine science) go to ITLOS, while politically sensitive, high-stakes conflicts (territorial claims, strategic resources) either stay out of court or end up in confidential arbitration or are settled by diplomacy.

5.6 Summary of Comparative Findings

Overall, ITLOS tends to be best suited for disputes that require specialized maritime expertise and prompt remedies, especially those that are not highly politicized. Examples include immediate-release cases for detained vessels, fisheries and environmental disagreements (short of boundary delimitation), and technical interpretation of UNCLOS provisions. The Tribunal's compulsory jurisdiction in provisional matters means parties can obtain timely interim relief before arbitration is constituted. Its transparency and trust-fund support also make it attractive for smaller States.

In contrast, disputes that involve broad sovereignty or strategic geopolitical stakes (maritime boundaries, resource division, national security activities) may favor arbitration or the ICJ. Annex VII arbitration is commonly used for complex boundary delimitations (as seen in Barbados/Trinidad, Bangladesh/India, and maritime delimitation in general) because it allows confidentiality and flexibility in tribunal makeup. The ICJ may be preferable when both parties have accepted its jurisdiction and desire a permanent-court resolution with the highest prestige (for instance, it settled Gulf of Maine and Romania/Ukraine disputes). The ICJ is also used for mixed law matters (e.g. treaty interpretation plus maritime issues) if a compromissory clause exists. Where UNCLOS prohibits a forum (due to Article 298) or where states have separate dispute treaties (Article 282), parties might instead rely on those arrangements or on political negotiation.

5.7 CONCLUSION

The comparative analysis shows that ITLOS plays an important but circumscribed role in the broader UNCLOS dispute resolution ecosystem. Its specialized character and procedural efficiency have proven effective for certain categories of cases – notably, prompt-release incidents, fisheries/environmental disagreements, and delimitation cases between relatively equal partners.ITLOS's jurisprudence has contributed clarity on UNCLOS obligations and demonstrated the benefits of a neutral international tribunal. However, the Tribunal's impact is limited by jurisdictional opt-outs, selective state participation, and the fundamental weakness of international law: voluntary compliance. As noted, powerful states can bypass ITLOS and arbitration if they choose (as seen in the Arctic Sunrise or South China Sea contexts), which undercuts uniformity of law.

To enhance the effectiveness of UNCLOS dispute settlement, a harmonized and complementary approach is needed. States could be encouraged to make consistent Article 287 declarations (so that preferred fora align) and to minimize excessive Article 298 exclusions. Greater use of conciliation or negotiation to narrow issues before formal proceedings might reduce the burdens on courts and tribunals. At the institutional level, ITLOS, the ICJ, and PCA could improve dialogue and consistency – for example, ITLOS judges already sometimes serve as arbitrators (though ICC publication policies differ). UNCLOS itself envisions a "case law" approach (Article 293) to foster consistent interpretation; states and tribunals should leverage this by citing relevant decisions across forums.

In conclusion, ITLOS has filled a valuable niche, offering speedy and expert adjudication in many maritime cases. Yet it cannot alone ensure peace at sea. The UNCLOS dispute settlement mechanism only works to the extent that states are willing to use it and to abide by it. Better harmonization – through informed forum choice, use of procedural innovations, and sustained political support – would strengthen the overall regime. As maritime disputes grow with issues like climate change and deep-sea mining, it will be increasingly important for ITLOS, the ICJ, and arbitral tribunals to operate in a complementary fashion, drawing on each forum's strengths to resolve conflicts and uphold the Law of the Sea.

CHAPTER 6
CONCLUSION AND RECOMMENDATIONS

6.1 SUMMARY OF KEY FINDINGS

The preceding analysis has shown that the International Tribunal for the Law of the Sea (ITLOS) plays a distinct but circumscribed role in the UNCLOS dispute-settlement framework. ITLOS is a permanent maritime court that has adjudicated 33 contentious cases (with 30 judgments/orders and 3 advisory opinions issued between 1995 and 2025). Its jurisdiction is limited to "matters concerning the interpretation or application" of UNCLOS provisions, subject to optional reservations (Article 287 choices and Article 298 opt-outs) by states. In practice, ITLOS has been used mainly in cases involving vessel arrests, environmental disputes (e.g. the *MOX Plant* case), fisheries (e.g. *the Southern Bluefin Tuna cases*), and boundary delimitation (by special chambers). It has provided a specialized forum where developing or smaller states can litigate against larger powers on an equitable basis – in ITLOS's own words, a "level playing field" available to all members regardless of size.[158]

Compared with other mechanisms, ITLOS has both strengths and limitations. Its strengths include specialization in maritime law, relative speed (average case resolution ~2 years; provisional measures often resolved within a month) and low cost to parties (no judge fees)[159]. ITLOS also offers flexibility via ad hoc Special Chambers when parties agree, and it enforces UNCLOS rules on pollution and safety (for example, by prescribing swift measures in pollution or arrest cases). Its limitations stem mainly from consent and enforcement issues. Many key powers have excluded themselves by treaty declarations: for instance, Article 298 permits states to opt out of compulsory settlement for maritime delimitation, military activities, or other categoriesg. As a result, ITLOS cannot hear many boundary or security disputes unless both parties agree. Furthermore, like all international tribunals, ITLOS lacks any direct enforcement mechanism beyond political pressure; compliance with its rulings depends on states'

[158] Phan Duy Hao, *The Role of ITLOS in the Legal Order for the Seas and Oceans*, THẾ GIỚI & VIỆT NAM (Oct. 23, 2024), https://en.baoquocte.vn/the-role-of-itlos-in-the-legal-order-for-the-seas-and-oceans-279894.html.
[159] *Ibid*

willingness. Chapters 1–5 found that compliance is high among smaller parties but uneven against great powers. Most of ITLOS's judgments have reportedly been honored by the parties involved, but there are notable exceptions. For example, in the *Arctic Sunrise* case (NL v. Russia, 2013) Russia initially refused ITLOS's provisional measures order – later releasing the vessel only by an unrelated amnesty. By contrast, the 2014 Bangladesh–India arbitral boundary award (rendered under UNCLOS Annexe VII) was complied with by India with little dispute.

On environmental questions, UNCLOS imposes strong duties (e.g. Part XII: precaution and due diligence for marine pollution) and ITLOS has begun to give them concrete meaning. The Tribunal's rulings and recent advisory opinions underscore that states must "take all necessary measures" to prevent and control pollution of the marine environment[160]. For example, in 2024 ITLOS confirmed that anthropogenic greenhouse gases impacting the oceans count as marine pollution and must be addressed under UNCLOS obligations. Nevertheless, the Tribunal's case law on environment is still limited, since only a handful of disputes (e.g. *Southern Bluefin Tuna*, *MOX Plant*, *Swordfish*) have involved environmental elements, and it must balance these duties against coastal and navigation rights.

Finally, ITLOS is starting to confront "emerging" maritime challenges. Notably, the Seabed Disputes Chamber gave an advisory opinion in 2011 on deep-seabed mining, clarifying sponsoring-state responsibilities under UNCLOS Part XI[161]. In 2024 ITLOS issued its first climate advisory (at the request of Pacific small island states), recognizing sea-level rise and ocean acidification as ocean issues and urging GHG mitigation. These developments suggest ITLOS is adapting beyond traditional cases (e.g. arrests and boundaries) to new issues. In sum, Chapters 1–5 found that ITLOS's effectiveness is mixed: it offers credible, specialized dispute resolution with broad accessibility and notable speed, but it is constrained by limited compulsory jurisdiction (especially on politically sensitive issues) and by the lack of a robust enforcement mechanism. State power politics clearly influence outcomes: smaller states have gained meaningful relief through ITLOS, while major powers sometimes

[160] UNCLOS, art 194.
[161] Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Advisory Opinion, Seabed Disputes Chamber, ITLOS (Feb. 1, 2011), 50 I.L.M. 648 (2011).

resist or conditionally comply, highlighting that ITLOS's legal authority is only as strong as the political will of its members.

6.2 Evaluation of ITLOS's Overall Effectiveness

ITLOS's overall effectiveness must be measured against the criteria of jurisdictional scope, procedural efficiency, enforceability, and adaptability to new challenges:

- **Jurisdictional Scope and Participation.** Under UNCLOS Article 287, ITLOS is one of three primary forums (with ICJ and Annex VII arbitration) for compulsory settlement, but only if both parties agree or have made no treaty declaration excluding it. Critically, many states have exercised opt-outs under Article 298, excluding ITLOS (and arbitration) for disputes over maritime boundaries, military activities, or disputes previously in the UN Security Council. Thus, some of the most contentious issues (e.g. EEZ delimitation between neighboring powers) often cannot be forced into ITLOS. Nevertheless, within its accepted domain ITLOS has universal participation (over 150 parties to the Tribunal) and has presided over diverse cases from all regions. Its judges bring specialized law-of-sea expertise, and it can convene Special Chambers when states so request, as in the Ghana–Côte d'Ivoire delimitation (ITLOS Special Chamber, 2017) or the Chile–EU swordfish case (ITLOS Special Chamber, 2000). Compared to the ICJ, which can adjudicate a broad range of international disputes (land, human rights, etc.) but requires separate consent, ITLOS offers maritime law specialization. Compared to Annex VII arbitration, ITLOS is more institutionalized (permanent tribunal with Registry) and less dependent on party agreement to procedures. On balance, ITLOS's jurisdictional design strengths lie in providing a clear, consistent forum once consent is given, but its limitations are that key states may sidestep ITLOS and that ancillary UN bodies (like the ISA or special commissions) may invoke ITLOS only via advisory requests rather than direct recourse.
- **Procedural Efficiency and Accessibility**. ITLOS has demonstrated a generally swift and cost-effective process. By its own reporting, complex proceedings take on average about two years, and urgent cases (prompt release of vessels, provisional measures) often are resolved in roughly a month. For instance, in the *Southern Bluefin Tuna* provisional measures case (Australia/New Zealand v. Japan), ITLOS set hearings on 18–20 August 1999 and delivered its Order

prescribing provisional measures on 27 August 1999. Such timelines rival or exceed what many ad hoc tribunals and even the ICJ achieve. Moreover, ITLOS's procedural rules and culture of oral hearings make the process transparent and predictable. Crucially, disputes before ITLOS incur no judge fees or registry charges for the parties; this lowers barriers for developing states. By contrast, arbitration under Annex VII can be more expensive and variable in duration (each party typically pays its arbitrators and shared expenses). In sum, ITLOS scores high on efficiency and accessibility, making it a practical venue especially for small states. (One caveat is that ITLOS has relatively few pending cases, so there is little backlog – the modest case load implies new cases can be heard promptly.)

- **Enforceability and Compliance**. ITLOS judgments and orders are binding under UNCLOS Article 296, but like other international tribunals the Tribunal lacks enforcement arms. The effectiveness of ITLOS thus depends on whether states honor its decisions. Empirical evidence suggests that compliance has been generally good in ITLOS cases, particularly among maritime powers that respect UNCLOS. However, power asymmetries do matter. Great powers can choose to ignore rulings when inconvenient. Indeed, in *Arctic Sunrise* Russia publicly rejected ITLOS jurisdiction, and similarly India has consistently declined third-party adjudication in disputes it considers sensitive (see *Enrica Lexie* and others). When ITLOS was blocked, some disputes have proceeded via arbitration (e.g. Russia ultimately agreed to pay compensation in Annex VII arbitration of the Arctic Sunrise case). In sum, ITLOS's enforceability is conditional: while most parties respect its orders (as they affirm in statements or follow up with action), noncompliance by a powerful party is possible. Unlike the ICJ, ITLOS has no enforcement recourse under the UN Charter (e.g. Security Council enforcement); its leverage is primarily moral authority, state reputations, and diplomatic pressure.
- **Adaptability to Emerging Issues**. Originally framed for navigation, fisheries, and resource disputes, UNCLOS did not explicitly envision issues like climate change or advanced technology. Nonetheless, ITLOS has shown a capacity to extend legal reasoning to new domains. Its 2024 advisory opinion – the first climate-related advisory by an international court – explicitly treated ocean warming, sea-level rise, and ocean acidification as subjects of UNCLOS's pollution and environmental obligations. The Tribunal interpreted UNCLOS Article 194 broadly, finding that

anthropogenic greenhouse gas emissions that affect the oceans "fall within the definition of marine pollution" and obligate states to take "all necessary measures" to reduce those emissions. This was a novel extension of maritime law into global environmental regulation. Similarly, the Seabed Disputes Chamber tackled deep-sea mining questions: in 2011 it delivered an advisory opinion clarifying state responsibilities for activities in the international seabed areai. These examples show that ITLOS (through its Seabed Chamber) can interpret UNCLOS flexibly to address new challenges. However, such adaptability is still emerging. Few traditional cases have involved climate or seabed exploitation directly. Many contemporary challenges (e.g. autonomous vessels, cyber threats, or synthetic biology in the ocean) lie outside ITLOS's current jurisprudence. By contrast, non-UNCLOS forums (like IMO, ICJ, arbitration, or specialized mechanisms) may handle some issues. Overall, ITLOS has begun to evolve its mandate to cover urgent maritime concerns (environment and resources), but it remains to be seen whether states will leverage ITLOS for the full spectrum of future ocean governance disputes.

In conclusion, ITLOS has proven reasonably effective as a law-of-the-sea dispute body: it has delivered authoritative decisions with technical depth, often quickly and in a cost-conscious way. Its permanent structure and perceived neutrality have made it an attractive forum for many states. Yet its impact is tempered by the voluntary nature of international adjudication and the strategic calculations of powerful states. ITLOS's balancing of maritime rights and environmental protection is cautious but notable: it enforces UNCLOS duties to cooperate and protect (e.g. by prescribing precautionary measures in pollution and fisheries cases), but ultimate outcomes still depend on state implementation. The Tribunal's recent foray into climate change and seabed mining indicates a forward-looking approach, but significant maritime challenges (climate-driven boundary changes, deep-sea governance, emerging technologies) will test the tribunal's capacity and the UNCLOS regime.

6.3 INDIA AND ITLOS

India ratified the United Nations Convention on the Law of the Sea (UNCLOS) in 1995, and made an Article 287 declaration without selecting any of the four compulsory

forums (ITLOS, ICJ, Annex VII, or Annex VIII). As a result, Annex VII arbitration becomes the default forum unless India agrees otherwise.

India has also made a broad Article 298 declaration, opting out of compulsory dispute settlement in three key areas:

a) Maritime boundary delimitation,

b) Military activities, and

c) Disputes before the UN Security Council.

This effectively limits ITLOS's compulsory jurisdiction over India in high-stakes disputes, such as those involving strategic waters, security operations, or contested boundaries.

India should recognize ITLOS as a useful forum for technical and environmental maritime issues, while remaining cautious about binding rulings on sovereignty. Its track record shows that ITLOS excels in precautionary environmental measures – for instance, in the *MOX Plant* case the Tribunal stressed the "duty to cooperate" to prevent marine pollution and ordered India and the UK to exchange information and monitor risks rather than shutting the plant down. More recently ITLOS's 2024 advisory opinion reinforced UNCLOS obligations to protect the marine environment (e.g. by linking climate-change impacts to pollution controls). By contrast, ITLOS has no authority over land sovereignty, and its judgments are only as effective as parties' willingness to comply. A major power like China, for example, has opted out of compulsory maritime arbitration (Article 298) and flatly rejected the 2016 South China Sea award. Even cases India has engaged in (Bangladesh/India 2014) yielded 'win–win' outcomes only by introducing novel compromises; but those "gray areas" remain points of friction.

India could therefore selectively invoke ITLOS for environmental or delimitation cases involving cooperative neighbors, but preserve flexibility for intractable boundaries. In practice this means consenting to tribunal jurisdiction in disputes (such as ecological or fisheries issues) where all parties are on board, yet retaining Article 298 options to exclude contentious baseline or delimitation claims from automatic adjudication. (Notably, India's accession declaration itself reserves the right to make Article 298 exceptions.) New issues could even be adjusted mid-stream – for example, some States have withdrawn Article 298 reservations during proceedings – giving India diplomatic

leeway. In short, recommend a balanced approach: use ITLOS to advance cooperation on marine environmental and sustainable-development issues, but rely on negotiation or conciliation (rather than UNCLOS adjudication) when disputes hinge on territorial sovereignty or involve non-parties.

6.4 Policy Recommendations for Strengthening Maritime Dispute Resolution

Building on these findings, several policy measures could enhance the effectiveness of ITLOS and the UNCLOS dispute system. These recommendations are grounded in political and legal realism, aiming to work within the UNCLOS framework:

- **Expand Jurisdictional Participation.** UNCLOS's compulsory dispute settlement relies on state consent. States should be encouraged to ratify UNCLOS and accept its dispute clauses, especially by withdrawing or narrowing Article 298 declarations. International bodies (e.g. the UN General Assembly or UNCLOS Meetings of State Parties) could highlight the importance of broad jurisdiction. In practical terms, coastal states could commit (by domestic legislation or international pledge) to accept ITLOS/ICJ adjudication for certain categories of disputes (like fisheries or marine environment issues). Outreach efforts, especially in major powers that have hesitated (e.g. persuading the United States or China to fully endorse UNCLOS dispute settlement), would level the playing field. In parallel, States could sign bilateral agreements to submit specific disputes to ITLOS; these "protocols of understanding" can lock in commitments despite Article 298. Any expansion of jurisdiction should also clarify the role of ITLOS vis-à-vis other bodies (e.g. ensuring that ITLOS can entertain cases under related treaties to UNCLOS where relevant).

- **Enhance Procedural Efficiency and Accessibility**. While ITLOS is already efficient, further measures can improve it. One recommendation is to strengthen the Registry and trust funds: increasing contributions to the ITLOS Trust Fund (established by UNGA Resolution 55/7, 2000) would help fund legal aid, translations, and expenses for developing countries. States and international organizations (e.g. the EU) can donate to this Fund to support indigent parties. ITLOS and the Division for Ocean Affairs (UN DOALOS) should also publicize the Fund more broadly. Procedurally, the Tribunal could adopt streamlined case

management rules (deadlines for pleadings, use of video hearings, pro forma orders) and encourage "friendly settlements" by facilitating mediation alongside proceedings. Promoting the use of *Special Chambers* (with co-chaired judges) can tailor procedures to complex cases; governments should be made aware of this option. Finally, investment in the Tribunal's staff and facilities (from the UN or host-country Germany) can ensure prompt case handling. All these steps would make ITLOS even more responsive and lower barriers for states seeking justice.

- **Strengthen Compliance Mechanisms**. The UNCLOS dispute system lacks an enforcement arm, so political and diplomatic means must be used to bolster compliance. States should commit in advance to accept and implement awards or orders ("comply in good faith"), possibly by reserving removal of Article 94 (ICJ enforcement) via separate agreement, or by agreeing to register judgments in the UN General Assembly (an informal practice that can increase pressure). When violations occur, other states or institutions can use names-and-shame tactics: for example, UNGA or regional organizations could adopt resolutions reaffirming the tribunal's decisions and calling on compliance. Another approach is linkage with other regimes: incorporating compliance with ITLOS into trade, aid, or security dialogues could provide incentives; for instance, parties might agree that refusal to implement an award will suspend certain fisheries agreements or invite WTO dispute checks. On the legal side, states could consider a collective "declaratory arrest" mechanism (similar to maritime hot pursuit) for assets of recalcitrant states, though this is ambitious. More practically, capacity-building helps compliance: judicial decisions have greater impact if states incorporate UNCLOS obligations into their domestic law and practice. Training judges, lawyers, and officials (especially in key maritime powers) on ITLOS jurisprudence would mainstream the Tribunal's authority and reduce future non-compliance.

- **Integrate Environmental Protection into Dispute Settlement.** UNCLOS Part XII already obliges states to prevent and control marine pollution and to conserve resources, but implementing this through disputes has been limited. A concrete recommendation is to utilize and expand Annex VIII arbitration, which covers fisheries, scientific research, and pollution (though few states currently opted in). Encouraging more states to join or amend Annex VIII could create a

specialized arbitral panel for environment-related cases. Similarly, states could agree (by amendment or declaration) to submit environmental disputes (e.g. over offshore drilling or seabed mining impact) to ITLOS. Another step is to ensure that ITLOS cases routinely consider environmental law principles: tribunals should explicitly apply UNCLOS environmental articles (Articles 192–196) and precautionary doctrine. To that end, the UN Division for Ocean Affairs and relevant agencies (IMO, IUCN, UNEP) could draft guidelines or best practices for ITLOS judges, summarizing scientific standards and environmental principles to use in adjudication. In the policy realm, linking ITLOS to global environmental governance is key. For instance, when climate obligations become legally binding (via UNFCCC), states could invite ITLOS to interpret how those obligations complement UNCLOS duties. By reinforcing UNCLOS's conservation goals, the dispute system can better balance maritime rights with environmental protection.

- **Support Capacity Building and Participation**. Finally, improving maritime dispute resolution requires empowering states—especially developing and small island states—to participate effectively. Beyond financial aid, states could cooperate on legal and technical assistance. For example, the UN and regional bodies (African Union, ASEAN) might sponsor training workshops on UNCLOS dispute procedures. Outreach initiatives could publicize ITLOS decisions and educate governments on their meaning. States with extensive experience (e.g. Netherlands, Australia) can mentor less experienced claimants. Non-governmental organizations and academic centres should also be invited to file amicus briefs (as IUCN did in the Seabed advisory), broadening participation. In sum, a culture of dispute settlement needs nurturing: if more states see ITLOS as a fair, accessible forum, they will be likelier to use it instead of unilateral measures. These recommendations—jurisdictional openness, procedural streamlining, compliance incentives, environmental integration, and capacity building—are complementary and grounded in realistic implementation within existing international law.

6.5 Future Prospects and Challenges

Looking ahead, the maritime dispute settlement system will face new prospects and challenges that warrant further research and policy attention:

Climate Change and Sea-Level Rise. Rising seas will alter coastlines and baselines, potentially redrawing maritime zones. Future disputes may arise over how to treat baselines of now-submerged islands or shifting boundaries. Research could explore legal principles for maintaining or adjusting maritime entitlements when a State's territory is flooded. ITLOS (or the International Court of Justice) may eventually be asked to resolve such claims; their advisory opinions or judgments will shape global responses to climate impacts. The recent ITLOS climate advisory demonstrates a legal foundation for addressing climate-related harms, but specific sea-level scenarios remain unresolved. Scholars should examine how UNCLOS provisions (e.g. Article 121 on islands, or Article 76 on continental shelf) interact with climate-driven changes, and how dispute mechanisms can adapt. For example, one proposal is a standing understanding that historical baselines remain in force, which might be tested in court. In any case, the intersection of climate science and maritime law is a fertile field for future study.

Deep-Sea Mining and the Area. The International Seabed Authority (ISA) is finalizing rules for commercial mining of polymetallic nodules and other resources. Disputes are likely to arise over exploration/exploitation contracts, environmental damage, or benefit-sharing. ITLOS's Seabed Chamber is already the designated forum for such disputes under UNCLOS Part XI. Future research should analyze how ITLOS jurisprudence (e.g. its 2011 advisory on sponsoring states) aligns with evolving ISA regulations. Key challenges include enforcing environmental standards in the Area and resolving state–state or state–company conflicts. Policymakers should consider clarifying liability regimes and dispute clauses in ISA contracts now, to prevent future litigation gridlock. In particular, integrating precaution and biodiversity protection into mining law (and possibly referring disputes to ITLOS) will be critical for sustainable development.

Marine Biodiversity (BBNJ) and Ecosystem Governance. The forthcoming UN treaty on marine biodiversity in areas beyond national jurisdiction (BBNJ) will introduce new management regimes for oceans. When in force, it may create fresh legal obligations

(e.g. marine protected areas, genetic resource sharing) that intersect with UNCLOS. Dispute settlement in the BBNJ context is not yet defined, but ITLOS could conceivably play a role if disputes overlap with traditional law-of-sea issues. Future work should clarify how UNCLOS dispute clauses apply to BBNJ measures, and whether new joint dispute bodies or arbitration panels are needed.

Technological and Geopolitical Change. Advances in technology (autonomous ships, AI-driven navigation, satellite surveillance) raise questions about implementation of the right of innocent passage, search-and-rescue obligations, and enforcement at sea. ITLOS and other tribunals may eventually address incidents involving high-tech vessels or cyber operations at sea. Moreover, geopolitical tensions (in the Arctic, South China Sea, etc.) will continue testing ITLOS's authority. Scholars should study the Tribunal's potential role in de-escalating great-power maritime disputes, or how emerging security doctrines interact with UNCLOS norms. In sum, the law of the sea must evolve alongside ocean science, technology, and politics, and ITLOS's jurisprudence will need to keep pace.

In conclusion, ITLOS has established itself as an important pillar of the rules-based maritime order, but it must continuously adapt to remain effective. Strengthening the Tribunal (through wider participation, procedural improvements, and linkage to other ocean governance regimes) and anticipating novel issues (climate, deep seabed, biodiversity) will ensure that international law of the sea continues to balance sovereign rights with shared obligations in the decades to come.

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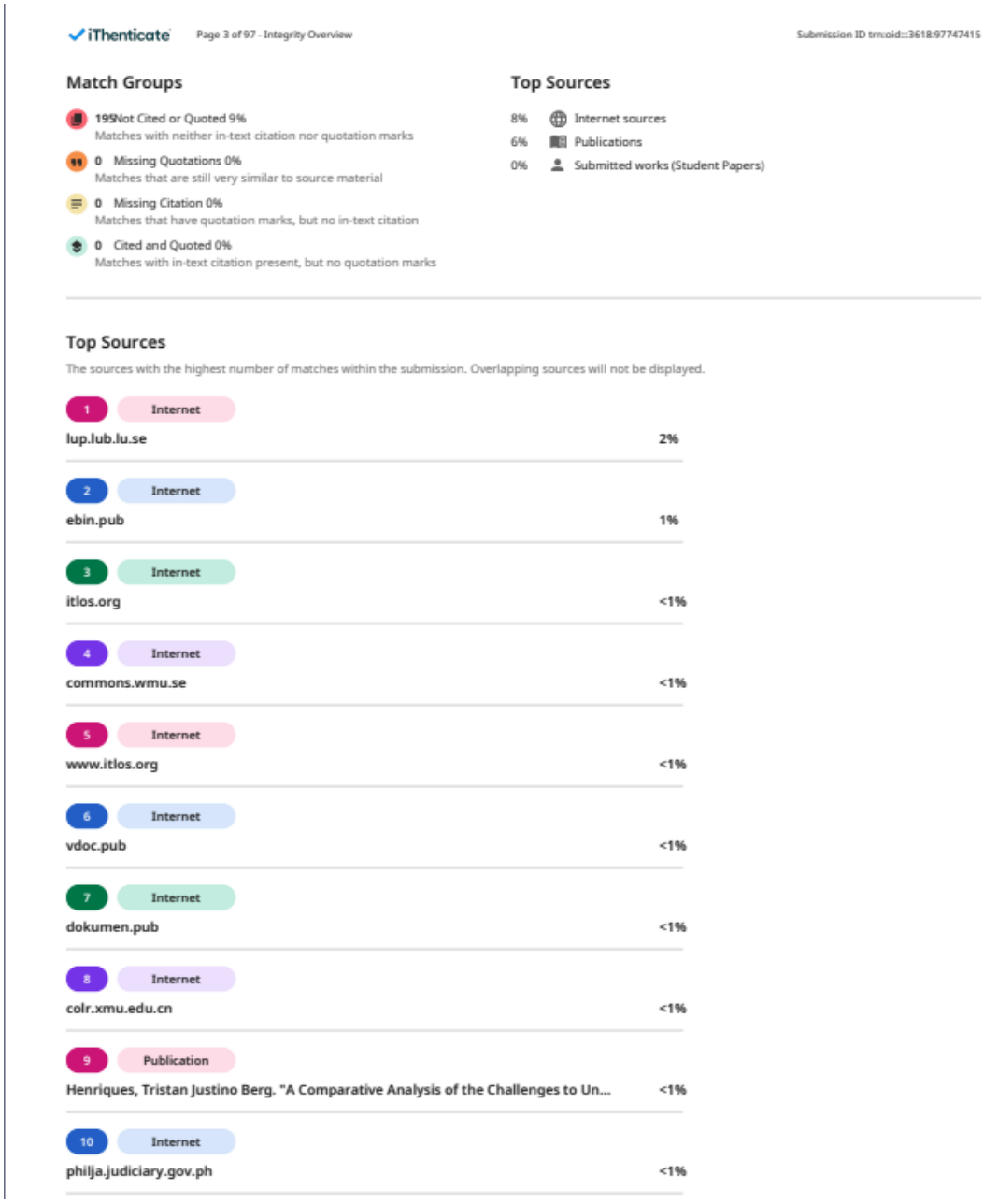

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