Environmental Disputes from Regional Sea Programmes before ITLOS: Its Potential Role, Contribution, and the Challenges it Would Face in a Land-based Pollution Case

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1 Introduction

The United Nations Convention on the Law of the Sea ("LOSC") has long been acknowledged by the international community as the Constitution of the oceans in that it establishes “a legal order for the seas and oceans” which facilitates inter alia “the peaceful use of the seas and oceans”, the utilisation of resources, and “the protection and preservation of the marine environment.” 1 It acts as a framework convention and is further implemented by other related international agreements; 2 therefore, as Wolfrum points out, there is a plurality

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of international norms that cover the same topic or rights and treaty parallelism exists in both substance and dispute settlement provisions.\(^3\)

In the field of the protection of the marine environment, action has been taken at various levels to further implement the obligation to protect and preserve the marine environment under the *LOSC*. For example, states cooperate at the regional level by establishing Regional Sea Programmes (“<strong>RSPS</strong>”) to prevent, reduce, and control all sources of marine pollution.\(^4\) RSPS are governed by both binding and non-binding instruments and they further implement the obligations under Part XII of the *LOSC*. Land-based pollution (“LBP”) is no exception and most of these RSPS have protocols, or at least a provision in their convention, dealing with this source of pollution. Based on this example, it is inevitable that parallel rights and obligations between the *LOSC* and those RSPS conventions and protocols exist in both the substantive and dispute settlement provisions.

To settle a dispute under the *LOSC*, Article 287 provides for the choice of procedure under which states may choose a forum for cases to be adjudicated and settled, which includes the International Tribunal for the Law of the Sea (“<strong>ITLOS</strong>”). It is a specialised Tribunal established by the *LOSC* with the jurisdiction to adjudicate any dispute concerning the interpretation and application of the Convention submitted to it in accordance with the *LOSC* and all matters specifically provided for in any other agreement which confers jurisdiction on it.\(^5\) So far, the ITLOS has had the opportunity to adjudicate twenty-five cases, two of which were advisory opinions.\(^6\) Regarding the protection of the marine environment through the RSPS, only one RSPS-related case has been brought to the ITLOS, namely, the <strong>Mox Plant</strong> case.\(^7\) This begs the question of why, in this context and according to its record, has the service of this Tribunal been so little utilised? Are there any legal obstacles that prevent an environmental case of the RSPS reaching the ITLOS? Also, what are the potential roles,

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3. *Mox Plant case (Ireland v. United Kingdom) (Provisional Measure)*, (International Tribunal for the Law of the Sea, Case No 10, 3 December 2001) [60] (“*Mox Plant (Provisional Measures)*”) (Judge Wolfrum) 1.

4. At present, there are 18 RSPS across the globe. See, <strong>UNEP</strong> Regional Seas Programmes <http://web.unep.org/regionalseas/>.

