INTRODUCTION

International courts and tribunals are in competition with arbitral tribunals, the latter having, from the point of view of potential parties several advantages. One of the perceived advantages is that that the parties can influence the bench—although this “advantage” may be more psychological than real. Another perceived advantage of arbitral tribunals is the smaller number of judges involved. To accommodate such considerations international courts and tribunals have opened the possibility of establishing *ad hoc* chambers to deal with a particular case. Account has to be taken of the fact, though, that the parties have made less use of this procedural option than expected. This may be due to the fact that such *ad hoc* chambers still are too closely linked to the international court or tribunal to which they belong or, in other words, do not offer the parties the influence concerning the composition of the bench as desired.

The International Tribunal for the Law of the Sea has followed the trend of providing for the option to establish *ad hoc* chambers. Although the Statute and the Rules of the International Tribunal for the Law of the Sea concerning the

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1 This contribution is for an old friend and colleague, the late Judge Choon-Ho Park, and in memory of a longstanding relationship. I cherish the memory of our last meeting in Seoul. This essay also appears in Jon Van Dyke et al. (eds.), *Governing Ocean Resources—New Challenges and Emerging Regimes: A Tribute to Judge Choon-Ho Park*, (Leiden/Boston, forthcoming). [Editors’ Note: The essay was written for publication in the aforementioned volume and is printed in the present volume as well, at the request of the LOSI directors, by generous permission of Judge Wolfrum.]

establishment of *ad hoc* chambers build upon the Statute as well as the Rules of the International Court of Justice\(^3\) and its established practice, they introduced some important innovations.

The rules concerning the establishment of chambers by the International Court of Justice have undergone some evolutionary changes. The original Statute of the Permanent Court of International Justice provided for chambers to be formed to review cases on labour law, transit and communications; it also provided for a Chamber of Summary Procedure. This system was modified for the International Court of Justice. Its Statute opened the possibility for the establishment of chambers to deal with particular categories of cases (special chambers) and—and this was the innovation—to deal with a particular case (*ad hoc* chambers). As far as *ad hoc* chambers are concerned Article 26, paragraph 2, of the ICJ Statute provides that the number of judges to constitute an *ad hoc* chamber will be determined by the Court with approval of the parties to the dispute. The Statute does not address, though, how the judges are to be selected. This is left to the Rules of the Court although it was disputed which discretion the Court actually had in this respect.

The approach of the ICJ in respect of Chambers was taken over in principle for ITLOS. It should be noted that, so far, chambers to deal with particular categories of cases have not been used. The idea that judges—particularly qualified for particular cases—are members of such chambers does not reflect the reality of their composition. Very often judges of the international court or tribunal in question serve in such chambers on a rotating basis and not for a long enough time to give them the opportunity to become experts. Under policy considerations it is also doubtful whether this would be desirable. Too much specialization may result in losing sight of international law in general and may ultimately foster fragmentation of international law.

In 1970, preceding the Gulf of Maine case\(^4\), voices representing politics and the academic world advocated that greater use should be made of chambers of the International Court of Justice\(^5\). The reasons given to justify such proposals were twofold and interrelated. It was considered that parties to a dispute were more

