This paper addresses two questions regarding proceedings before the International Tribunal for the Law of the Sea (ITLOS or the “Tribunal”): the status of non-State entities in proceedings before the Tribunal, and the costs incurred by parties in cases before the Tribunal.

Non-State Entities in Proceedings before the Tribunal

In considering the role of non-State entities in proceedings before the Tribunal, a distinction should be drawn between two situations: participation by non-State entities as parties to cases before the Tribunal, and other forms of participation by non-State entities in legal proceedings.

Non-State Entities as Parties to Cases Before the Tribunal


The Convention was adopted in 1982, at a time when participation in the international community was no longer limited to States. In addition to States, non-State entities may become parties to UNCLOS and, to that extent, the expression “States Parties” refers to them. Indeed, pursuant to Article 305, UNCLOS is open not

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1 See Article 1, paragraph 2, of UNCLOS:
2.(1)'States Parties' means States which have consented to be bound by this Convention and for which this Convention is in force.
(2)This Convention applies mutatis mutandis to the entities referred to in Article 305, paragraph l(b), (c), (d), (e) and (f), which become Parties to this Convention in accordance with the conditions relevant to each, and to that extent 'States Parties' refers to those entities.
only to States but also to some territories\(^2\) and self-governing associated States,\(^3\) as well as to international organizations exercising competences—including the competence to enter into treaties—in matters governed by UNCLOS. Thus far, the only international organization to have acceded to UNCLOS and thereby become a “State Party” to it is the European Union (EU) and in this respect it may be observed that the EU was party in one case submitted to an *ad hoc* chamber of the Tribunal (Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean [Chile/European Union]).

With respect to the procedure applicable to international organizations in proceedings before the Tribunal, two features bear mentioning:

- Pursuant to Article 57, paragraph 2, of the Rules of the Tribunal, in a dispute involving an international organization, the international organization may be requested by the Tribunal to provide clarification as to which entity or entities (the international organization or its member States) is competent with respect to any specific question arising within the context of the dispute. The proceedings before the Tribunal may be suspended until such information is received.\(^4\)

- Article 22 of the Rules relates to the designation of a judge *ad hoc* in contentious cases involving non-State entities before the Tribunal. As regards international organizations, under this provision a judge having the nationality of a member State of the international organization is deemed to possess the “nationality” of the international organization. In the case of the EU, the operation of this rule might result in more than one judge having the nationality of this international organization. This situation is specifically addressed in Article 22, paragraph 4, of the Rules, which provides that “[w]here two or more judges on the bench are nationals of member States of the international organization concerned or of the sponsoring States of a party, the President may, after consulting the parties, request one or more of such judges to withdraw from the bench.”


\(^3\) See the situation of the Cook Islands—State associated with New Zealand—which ratified the Convention in 1995.

\(^4\) “In a dispute to which an international organization is a party, the Tribunal may, at the request of any other party or *proprio motu*, request the international organization to provide, within a reasonable time, information as to which, as between the organization and its member States, has competence in respect of any specific question which has arisen. If the Tribunal considers it necessary, it may suspend the proceedings until it receives such information.”