Chapter XII

The Contribution of the International Tribunal for the Law of the Sea to International Law

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I. *Introduction*

On November 16, 1994, after eight years of protracted and arduous negotiations, the United Nations Convention on the Law of the Sea of December 10, 1982\(^1\) entered into force. This Convention is one of the most important treaties ever elaborated under the auspices of the United Nations, as it provides a well-nigh universally agreed regime for the seas, regulating all ocean space, its uses and its resources.\(^2\) At present, 156 states and the European Community are parties,\(^3\) and this number will probably continue to increase.

The impetus for what has rightly been called a “constitution for the oceans”\(^4\) was the Memorandum of Malta, presented at the United Nations General Assembly in 1967, which proposed that the seabed and the ocean floor beyond the limits of national jurisdiction be declared “the common heritage of mankind,” not subject to national appropriation and reserved exclusively for peaceful purposes.\(^5\) It is

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doubtful whether such an overarching international instrument would ever have been negotiated without this initial spark.

Since its entry into force, the United Nations Convention on the Law of the Sea has undoubtedly played a major role in bringing order to the oceans, particularly by laying down a clear and universal framework of coastal state maritime jurisdiction. The causes for many maritime disputes between states have thus been eliminated. At the same time, the Convention contains an innovative system for the settlement of such disputes. It has been recognized as one of the most far-reaching and complex systems of dispute settlement to be found anywhere in international law. There can be no doubt that the underlying rationale for the creation of such a system was to safeguard the many delicate compromises enshrined in the Convention and to secure its uniform interpretation and application.6

The Convention on the Law of the Sea created three important institutions: the International Seabed Authority in Jamaica, the International Tribunal for the Law of the Sea in Hamburg, and the Commission on the Limits of the Continental Shelf which meets in New York. Since the oceans and seas cover almost 71 percent of the Earth’s surface, the Tribunal for the Law of the Sea has, from a geographical point of view, the largest jurisdiction in the world, apart from the International Court of Justice (ICJ).

Part XV of the Convention, which deals with the settlement of disputes, imposes an obligation on contracting parties to settle disputes by peaceful means and, in particular, provides for compulsory procedures with binding decisions.7 Annex VI of the Convention contains the Statute of the International Tribunal for the Law of the Sea, which is one of the four means for the settlement of disputes. The other alternative means are the ICJ, an arbitral tribunal constituted in accordance with Annex VII of the Convention, and a special arbitral tribunal under Annex VIII for certain categories of disputes such as fisheries, protection and preservation of the marine environment, marine scientific research, and navigation, including pollution from vessels and dumping.

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