ITLOS – International Tribunal for the Law of the Sea

1. Inauguration, Legal Position and Legal Basis

The International Tribunal for the Law of the Sea (ITLOS) was established by the United Nations Convention on the Law of the Sea of 10 December 1982 (LOSC) (→ Law of the Sea). It convened for the first time at its seat in the Free and Hanseatic City of Hamburg on 1 October 1996. The ceremonial inauguration of the judges during its first public session on 18 October 1996 brought to an end a development which had begun in 1970 with proposals to create a special procedure for the peaceful settlement of seabed disputes. Since November 2000 it has occupied its permanent headquarters Am Internationalen Seegerichtshof 1, 22609 Hamburg, Germany.

ITLOS is the second permanent international court with universal jurisdiction besides the International Court of Justice (→ ICJ). The jurisdiction of this “Tribunal of the Oceans” covers more than 70% of the earth’s surface and comprises (almost) all conceivable questions concerning the sea such as maritime boundaries, navigation, rights of overflight, the laying of submarine cables, marine scientific research, underwater cultural heritage, environmental protection, conservation and utilization of fish stocks, bio-prospecting, as well as the right to exploration and exploitation of the living and non-living resources of the seabed and its subsoil.

ITLOS was established “under the auspices of the United Nations”; but, unlike the ICJ and the two International Criminal Tribunals for the Former Yugoslavia and for Rwanda (→ ICC – International Criminal Court), it is neither a judicial organ of the United Nations nor a subsidiary organ of the Security Council (→ Principal Organs, Subsidiary Organs, Treaty Bodies; → UN System). It is also not an organ of the International Seabed Authority. ITLOS is rather an autonomous international
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judicial institution with legal personality which may conclude treaties, acquire movable and immovable property and institute legal proceedings. In addition, ITLOS has observer status at the General Assembly (A/RES/51/204). Because of its various relations with the United Nations and especially with their Secretary-General provided for partly in the LOSC, partly in the Agreement on Cooperation and Relationship Between the United Nations and the International Tribunal for the Law of the Sea of 18 December 1997 (A/RES/52/251, Annex) and other legal instruments, ITLOS may be counted, without doubt, as a member of the “UN family”. This was further underpinned by an exchange of letters between the UN and ITLOS, dated 26th May 2000 and 12th June 2001 respectively, which extended the competence of the UN Administrative Tribunal to the staff of the Registry of ITLOS (ITLOS Yearbook 2001, 145-148). The Tribunal is not, however, a specialized agency of the United Nations in the formal sense (Specialized Agencies).

The basic legal rules governing the operation of ITLOS are laid down in Articles 186-191, 279-299 LOSC and in its Annex VI which contains the Statute of the International Tribunal for the Law of the Sea (ITLOS Statute).

2. “A New Tribunal for a New Law”

From the outset ITLOS has been deemed, especially by developing countries, a symbol of a new international law of the sea: “a new tribunal for a new law”. Henry Kissinger called this new law of the sea the result of one of the “most important, most complex and most ambitious diplomatic undertakings in history”: the Third United Nations Conference on the Law of the Sea, or in short UNCLOS III (Law of the Sea). The negotiations in which more than 150 states participated and which took some nine years (1973-1982) were characterized by the demand of the developing countries for a new international economic order (International Economic Order (NIEO)), which was to find its expression, inter alia, in the just distribution of marine resources between the states and by the attempts of coastal states at seaward extension of their sovereign rights and jurisdiction (“creeping jurisdiction”). The negotiations at UNCLOS III were strongly influenced by two procedural principles: the formulation of “package deals” and the “consensus principle”. Only after all efforts at consensus had been exhausted, a formal vote was to be taken. On 30 April 1982, the Conference approved the text of the Convention by a formal vote of 130 in favor (among them almost all developing countries), four against (Israel, Turkey, USA and Venezuela), with seventeen abstentions (mostly industrialized nations, among them the Federal Republic of Germany). Although the LOSC was signed on 12 December 1982 by 119 states it should take another twelve years until it entered into force (twelve months after the deposit of the sixtieth instrument of ratification). The main reason for this was that important industrialized countries were opposed to Part XI of the LOSC on the exploration and exploitation of the resources of the seabed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction (the “Area”) with its provisions on production policies, participation in revenue, and the transfer of technology as well as the possibility of binding changes to the regime of the “Area” by a three-fourths majority of the states parties to the LOSC. Only the adoption on 28 July 1994 of the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (IA) which made substantial “modifications” to Part XI of the LOSC, opened the door for ratification by the industrialized states. According to Article 2 IA, the Implementation Agreement and Part XI of the LOSC are to be interpreted and applied together as “a single instrument”. In the event of any inconsistency, the provisions of the Agreement shall prevail. The LOSC with its 320 ar-