The International Tribunal for the Law of the Sea and Marine Environmental Protection: Expanding the Horizons of International Oceans Governance

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INTRODUCTION

The 1982 UN Convention on the Law of the Sea (UNCLOS) ushered in a new era of oceans governance to which the international community has been adjusting for the past two decades. In addition to the significant development of a range of maritime zones plus comprehensive provisions for the protection of the marine environment and marine scientific research, and the recognition of new regimes for archipelagic States and the deep seabed, the Convention also addressed dispute resolution. This in itself is not extraordinary as nearly all multilateral and bilateral treaties contain some provisions addressing dispute resolution. What made UNCLOS distinctive was that it sought to make the peaceful settlement of all disputes under the Convention compulsory. This action did not only refer to the provisions of Article 33 of the UN Charter, but went further through the establishment of complex dispute resolution mechanisms. These mechanisms not only relied upon existing institutions such as the International Court of Justice (ICJ), but also developed new institutions, including the following:

- The International Tribunal for the Law of the Sea (ITLOS);
- An Arbitral Tribunal under Annex VII;
- A Special Arbitral Tribunal under Annex VIII.

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1. 1833 UNTS 396.
2. UNCLOS, Art. 279.
3. 1 UNTS xvi.

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When it is considered that UNCLOS also created additional institutions such as the Commission on the Limits of the Continental Shelf (CLCS) and the International Sea-Bed Authority (ISBA), which have the capacity to be engaged in both formal and informal dispute settlement, it will be appreciated that the Convention has significantly revised how law of the sea disputes will be settled in the future.

However, the law of the sea is not contained within a single international instrument. While UNCLOS may be classified as the primary instrument, other multilateral and bilateral conventions and treaties give effect to the principles of the law of the sea that have developed throughout the past 50 years. In some instances, such as those treaties dealing with maritime boundaries, the instruments themselves seek to resolve disputes between the parties. In other instances, however, these additional instruments foster the development of subregimes in the law of the sea that can generate their own specific disputes. This has especially been the case with respect to fisheries, which while subject to overall management in framework provisions dealing with the exclusive economic zone (EEZ) and high seas in UNCLOS, have increasingly been the subject of regional and subregional management throughout the world's oceans. These management arrangements may cause numerous disputes between the parties concerning scientific data, quotas and catch limits, fishing practices, and the sovereign rights of coastal states. This in turn raises questions concerning how these disputes may be resolved within the framework of the specific fishing instrument, or within the wider UNCLOS.

The purpose of this article is to explore some of these issues with particular reference to environmental disputes. While it may be possible to characterise UNCLOS distinctively as a regulatory instrument for the oceans, in this article it is argued that the Convention has such a significant environmental impact that it can also legitimately be characterised as a multilateral environmental instrument for the oceans. Accordingly, particular emphasis will be given to law of the sea disputes with an environmental focus. A review will be undertaken of the dispute resolution mechanisms of UNCLOS, and the recent work of ITLOS.

4. See e.g., the 1978 Treaty between Australia and the independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, including the Area known as Torres Strait, and Related Matters [1985] ATS 4.
