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UNCLOS Annex VII Arbitration

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UNCLOS ANNEX VII ARBITRATION

Robert Beckman & Leonardo Bernard

I. SIGNIFICANCE OF UNCLOS PART XV

The 1982 United Nations Convention on the Law of the Sea (UNCLOS or the ‘Convention’) took twelve years to negotiate, and another twelve years to enter into force, but is now a universally accepted convention governing almost all uses of the oceans.¹ One of the unique features of UNCLOS is that, unlike most international conventions, its dispute settlement provisions are mandatory. The dispute settlement provisions in UNCLOS are not contained in an optional protocol that States can ratify separately. Instead, the dispute settlement provisions are incorporated into the Convention. Also, unlike most conventions, UNCLOS does not permit States to make reservations, so it is not possible for a State party to make a reservation excluding the dispute settlement provisions.² Thus, State parties must accept the dispute settlement provisions when they become parties to the Convention.

The general principle in the dispute settlement provisions in UNCLOS is that if a dispute arises between two States Parties on the interpretation or application of any provision in the Convention, and the dispute cannot be resolved through negotiation, either party to the dispute can unilaterally refer it to an international court or an international arbitral tribunal,³ and the decision of that court or tribunal is final and binding on the parties to the dispute.⁴ This procedure is referred to as the system of ‘compulsory procedures entailing binding decisions’.⁵

There are, however, some exceptions to the mechanism. Under Article 297 of UNCLOS, certain categories of disputes are excluded from the system of compulsory procedures entailing binding decisions.⁶ These include discretionary decisions of coastal States regarding requests to conduct marine scientific research in its exclusive economic zone (EEZ)⁷ and disputes concerning the

¹ *United Nations Convention on the Law of the Sea*, 10 December 1982, UNTS 1833 at 3 (entered into force 16 November 1994) [UNCLOS]. As of 26 August 2014, UNCLOS have 166 parties (including the European Union), with Niger acceded to the Convention on 7 August 2013.

² UNCLOS, Art 309. Compare this with other international conventions where the dispute settlement mechanisms are contained in the convention, but States are permitted to opt out of them by making a declaration or a reservation.

³ UNCLOS, Art 286.

⁴ UNCLOS, Art 296.

⁵ See UNCLOS, Section 2 of Part XV on the Settlement of Disputes, Compulsory Procedures Entailing Binding Decisions.

⁶ See UNCLOS, Section 3 of Part XV on the Settlement of Disputes, Limitations and Exceptions to Applicability of Section 2.

⁷ UNCLOS, Art 297(2)(a).

sovereign right of coastal states to exploit the living resources in its EEZ or the exercise by the coastal State of such rights.⁸

Furthermore, Article 298 of UNCLOS gives States the right to opt out of the compulsory procedures entailing binding decisions for certain categories of disputes which concern issues relating to national sovereignty. The optional exclusions include disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea boundary delimitation or disputes involving historic bays or titles,⁹ as well as disputes concerning military activities and certain disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction of the coastal State over living resources in its EEZ.¹⁰

II. COURTS AND TRIBUNALS WHICH DECIDE DISPUTES UNDER PART XV UNCLOS

Article 287(1) of UNCLOS provides that when signing, ratifying, or acceding to UNCLOS, or at any time thereafter, a State may make a declaration choosing one or more of the following means for settling disputes under Chapter XV of UNCLOS:

1. the International Tribunal for the Law of the Sea (ITLOS) in Hamburg, Germany;
2. the International Court of Justice (ICJ) in The Hague, the Netherlands;
3. an arbitral tribunal constituted in accordance with Annex VII; or
4. a 'special arbitral tribunal' constituted for certain categories of disputes as provided in Annex VIII.

If the two parties to a dispute have elected the same procedure, that court or tribunal will hear the case.¹¹ For example, Australia has declared that it prefers either the ICJ or ITLOS, and Denmark has declared that it prefers only the ICJ. Therefore, if a dispute were to arise between Australia and Denmark, it would be heard by the ICJ.

If the two parties to a dispute have not chosen the same procedure, or if they have not declared that they prefer any procedure, the dispute will go to arbitration under Annex VII.¹² Therefore, arbitration under Annex VII is referred to as the 'default procedure'. The only States in Asia Pacific that have made a declaration under Article 287 making their preferences clear are Australia (ICJ and ITLOS) and Bangladesh (ICJ). Thus, other States in Asia Pacific have 'by default' agreed to take any disputes on the interpretation or application of any provision in the Convention to Arbitration under Annex VII, unless they otherwise agree.

There have been three instances where cases instituted under Section 2 of Part XV of UNCLOS would have gone to arbitration under Annex VII, but the parties to the dispute subsequently agreed, before

⁸ UNCLOS, Art 297(3)(a).

⁹ UNCLOS, Art 298(1)(a).

¹⁰ UNCLOS, Art 298(1)(b).

¹¹ UNCLOS, Art 287(4).

¹² UNCLOS, Art 287(1).

the arbitral tribunal was constituted, to have the case heard by the ITLOS. The three cases are: *The M/V Saiga Case* between Saint Vincent & the Grenadines and Guinea;¹³ the *Maritime Boundary in the Bay of Bengal Case* between Bangladesh and Myanmar;¹⁴ and *The M/V Virginia G Case* between Panama and Guinea-Bissau.¹⁵ This procedure is permitted because the general principle underlying the dispute settlement procedures in UNCLOS is ‘agreement of the parties’.

There are several main differences in the case being heard by a court (ICJ or ITLOS) or by an arbitral tribunal established under Annex VII. First, the ICJ and ITLOS are permanent courts with 15 and 21 elected members, respectively.¹⁶ The parties therefore have little to say about who hears the case, except that if one of their nationals is not a member of the court, they are permitted to appoint an *ad hoc* judge to sit on the court for that case.¹⁷ By contrast, as will be explained below, the parties to the case have more influence on the selection of the persons who will constitute the Annex VII arbitral tribunal. Second, the ICJ and ITLOS judges are remunerated by the State parties, and the parties to the case do not have to compensate them.¹⁸ By contrast, the parties to the dispute must bear the costs of the arbitrators in arbitration under Annex VII.

III. NOMINATION OF PERSONS BY STATES PARTIES FOR LIST OF ARBITRATORS

Annex VII provides that States parties to UNCLOS may have some say in who serves as members of tribunals established under Annex VII arbitration.¹⁹ A list of arbitrators nominated by States parties to UNCLOS is maintained by the Secretary-General of the United Nations.²⁰ Every State party is entitled to nominate up to four persons to be on the list of arbitrators.²¹ There is no requirement that the persons nominated by a State party be their national. When constituting the arbitration tribunal, it is preferable for the disputing parties to appoint arbitrators from the list, but they are not obliged to do so.²² There are, however, certain circumstances when the persons appointed to serve on an Annex VII panel of arbitrators must be chosen from this list of arbitrators. This will be explained below.

Since almost all the States in Asia have not made a declaration indicating their preferred choice of procedure,²³ disputes in which they are a party are likely to go to arbitration under Annex VII.

¹³ [The M/V ‘SAIGA’ \(No. 2\) Case \(Saint Vincent and the Grenadines v. Guinea\)](#), (1999) ITLOS Case No 2.

¹⁴ [Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal \(Bangladesh/Myanmar\)](#), (2012) ITLOS Case No 16.

¹⁵ [The M/V ‘Virginia G’ Case \(Panama/Guinea-Bissau\)](#), (2014) ITLOS Case No 19.

¹⁶ *Statute of the International Court of Justice*, Art 3(1); *Statute of the International Tribunal for the Law of the Sea*, Art 2(1).

¹⁷ *Statute of the International Court of Justice*, Art 31(2)-(3); *Statute of the International Tribunal for the Law of the Sea*, Art 17(2)-(3).

¹⁸ *Statute of the International Court of Justice*, Art 32; *Statute of the International Tribunal for the Law of the Sea*, Art 18.

¹⁹ UNCLOS, Annex VII, Art 3.

²⁰ UNCLOS, Annex VII, Art 2(1).

²¹ *Ibid.*

²² UNCLOS, Annex VII, Art 3(b)-(c).

²³ For a complete list of preferred choice of procedure of State parties, visit the United Nations Treaty Collection website, online:

Therefore, it would seem logical that the States in Asia would exercise their right to nominate persons to the list of arbitrators. However, the only Asian States that have nominated persons for the list of arbitrators are: Indonesia (4), Japan (3), Korea (1), Mongolia (2) and Sri Lanka (2).

IV. INSTITUTION OF PROCEEDINGS UNDER ANNEX VII ARBITRATION

Only States parties to UNCLOS have access to the dispute settlement mechanisms in Part XV. Subject to the provisions of Part XV, any party to a dispute may submit the dispute to an arbitration tribunal constituted under Annex VII by written notification addressed to the other party or parties to the dispute.²⁴ The notification must be accompanied by a statement of the claim and the grounds on which it is based.²⁵

A State party to a dispute cannot institute arbitration proceedings under Annex VII unless certain conditions are present. First, there must be a dispute between the two States on the interpretation or application of one or more provisions in UNCLOS.²⁶ Second, the parties must first have exchanged views and attempted to settle the dispute by negotiation or other peaceful means.²⁷ Third, the party instituting the proceedings must have determined that the dispute cannot be settled by negotiation or an exchange of views.²⁸ On the last condition, there are precedents suggesting that the requirement that the dispute cannot be settled by negotiation or an exchange of views is not onerous.²⁹ Arbitral tribunals seem to give the State instituting the proceedings a large measure of discretion if it has determined that the dispute cannot be resolved through further negotiations.³⁰

V. REQUEST FOR PROVISIONAL MEASURES

A State instituting proceedings for arbitration under Annex VII may request provisional measures to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.³¹

If a dispute was submitted for arbitration under Annex VII, pending the constitution of such arbitral tribunal, the State instituting the arbitral proceedings may request provisional measures from

https://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXI~6&chapter=21&Temp=mtdsg3&lang=en.

²⁴ UNCLOS, Annex VII, Art 1.

²⁵ *Ibid.*

²⁶ UNCLOS, Art 288(1).

²⁷ UNCLOS, Art 283.

²⁸ UNCLOS, Art 286.

²⁹ See for example, *Arbitration between Barbados and the Republic of Trinidad and Tobago*, Award of the Arbitral Tribunal (11 April 2006) (*Barbados/Trinidad and Tobago*), at paras 201 – 207; see also *The Bay of Bengal Maritime Boundary Arbitration between the People's Republic of Bangladesh and the Republic of India*, Award of the Arbitral Tribunal, 7 July 2014, at para 72.

³⁰ *Ibid.*

³¹ UNCLOS, Art 290(1).

ITLOS.³² Once the Annex VII arbitral tribunal has been constituted to hear the dispute, it may modify, revoke or affirm the provisional measures prescribed by ITLOS.³³

Requests for provisional measures to ITLOS have been made in several cases where the disputes were submitted for arbitration instituted under Annex VII. For example, Ireland requested provisional measures to ITLOS for the United Kingdom to immediately suspend the operation of the MOX Plant in 2001;³⁴ Malaysia requested ITLOS to order Singapore to suspend all land reclamation activities in the vicinity of the maritime boundary between the two States in 2003;³⁵ and just last year, the Netherlands requested ITLOS to prescribe as provisional measures that Russia release the *Arctic Sunrise* and its crew members.³⁶

Under UNCLOS, the parties to the dispute are under a legal obligation to comply promptly with any provisional measures that have been prescribed.³⁷

VI. CONSTITUTION OF THE ARBITRAL TRIBUNAL

Article 3 of Annex VII sets out the procedures on how the tribunal is to be constituted. First, the tribunal is to consist of five persons, preferably from the list of arbitrators discussed above, unless the disputing parties agree otherwise. The disputing parties, therefore, have the right to agree between themselves on how the arbitral tribunal is to be constituted, even if it deviates from what is prescribed under Annex VII of UNCLOS. For example, in the case instituted by Malta against Sao Tome and Principe in 2013 concerning the vessel *Duzgit Integrity*, the parties agreed that the arbitral tribunal would comprise only three persons instead of the usual five.³⁸

Second, the party instituting the proceedings appoints one member when it gives notice to the other party that it is instituting proceedings pursuant to Annex VII, who can be its national.³⁹ In the notification to institute arbitration proceedings dated 22 October 2013, for example, Malta appointed former ITLOS Judge, Tullio Treves, as a member of the arbitral tribunal.⁴⁰

³² UNCLOS, Art 290(5).

³³ *Ibid.*

³⁴ *The MOX Plant Case (Ireland v United Kingdom)*, Provisional Measures, Order of 3 December 2001, ITLOS Case No 10, at para 29.

³⁵ *Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v Singapore)*, Provisional Measures, Order of 8 October 2003, ITLOS Case No 12 (*Land Reclamation Case*), at para 23.

³⁶ *The “Arctic Sunrise” Case (Kingdom of the Netherlands v Russian Federation)*, Provisional Measures, Order of 22 November 2013, ITLOS Case No 22, at para 34.

³⁷ UNCLOS, Art 290(6).

³⁸ International Tribunal for the Law of the Sea, Press Release, ITLOS/Press 209, ‘Two Arbitrators Appointed in the Arbitral Proceedings Instituted by the Republic of Malta against the Democratic Republic of Sao Tome and Principe in Respect of a Dispute Concerning the Vessel *Duzgit Integrity*’ (18 March 2014), online: <https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_209_E.pdf>.

³⁹ UNCLOS, Annex VII, Art 3(b).

⁴⁰ ITLOS Press Release, *supra* note 38.

Third, the other party to the dispute shall, within 30 days of receipt of the notification referred to in article I of this Annex, appoint one member, who can be its national.⁴¹ If the appointment is not made within that period, the party instituting the proceedings may ask the President of ITLOS to make such appointment.⁴² Such appointment shall be made from the list of arbitrators within a period of 30 days of the receipt of the request and in consultation with the parties. In the case concerning the vessel *Duzgit Integrity*, Sao Tome and Principe failed to appoint one member to the arbitral tribunal within the subscribed period of time. Thus, the President of ITLOS on behalf of Sao Tome and Principe, on 27 December 2013, appointed Judge James Kateka of ITLOS as a member of the arbitral tribunal.⁴³

Fourth, the other three members shall be appointed by agreement between the parties, and one of the three shall also be appointed the President of the arbitral tribunal.⁴⁴

If the parties are unable to reach agreement on the appointment of one or more of the members of the tribunal to be appointed by agreement, or on the appointment of the President, the remaining appointment or appointments shall be made by the President of ITLOS at the request of a party to the dispute.⁴⁵ Such appointments shall be made from the list of arbitrators within a period of 30 days of the receipt of the request and in consultation with the parties.

In the *Durzuil Integrity* case, since the disputing parties had agreed on a panel of three arbitrators, the disputing parties only need to agree to appoint one arbitrator to serve as President of the arbitral tribunal. It seems, however, that both Malta and Sao Tome and Principe failed to reach an agreement on the third arbitrator. Thus, on 13 March 2014, the President of ITLOS, in consultation with the parties, appointed Professor Alfred Soons as the final member and President of the arbitral tribunal.⁴⁶

VII. DEFAULT OF APPEARANCE OF ONE OF THE PARTIES

Parties to UNCLOS have consented in advance to the compulsory procedures entailing binding decisions in section 2 of Part XV. There are no provisions in UNCLOS or Annex VII providing that the parties to a dispute have a 'right' not to participate in the proceedings. In fact, Annex VII of UNCLOS sets out the duties of parties to a dispute, and provides that they shall facilitate the work of the arbitral tribunal.⁴⁷ It expressly obliges the parties to the dispute to provide the arbitral tribunal with all relevant documents, facilities and information.⁴⁸ It further provides that the parties shall enable

⁴¹ UNCLOS, Annex VII, Art 3(c).

⁴² UNCLOS, Annex VII, Art 3(c) & (e).

⁴³ ITLOS Press Release, *supra* note 38.

⁴⁴ UNCLOS, Annex VII, Art 3(d).

⁴⁵ UNCLOS, Annex VII, Art 3(d)-(e).

⁴⁶ ITLOS Press Release, *supra* note 38.

⁴⁷ UNCLOS, Annex VII, Art 6.

⁴⁸ UNCLOS, Annex VII, Art 6(a).

the tribunal when necessary to call witnesses or experts and receive their evidence and to visit the localities to which the case relates.⁴⁹

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award.⁵⁰ The absence of a party or the failure of a party to defend its case does not constitute a bar to the proceedings.⁵¹ However, before making its award, the arbitral tribunal must satisfy itself on two matters. First, it must satisfy itself that it has jurisdiction over the dispute; and second, it must satisfy itself that the claim is well founded in fact and law.⁵²

There have been two Annex VII arbitration cases in which one of the parties to the dispute has decided not to participate in the proceedings. The first was China in the arbitration case brought against it by the Philippines,⁵³ and the second was Russia in the *Arctic Sunrise* case brought against it by the Netherlands.⁵⁴

In the *Arctic Sunrise* case, the Russian Federation had advised ITLOS early in the proceedings that it did not intend to participate in the proceedings.⁵⁵ The Netherlands then exercised its right under Article 28 of the Statute of the International Tribunal for the Law of the Sea to request that ITLOS continue with the proceedings and make its decision on the request for provisional measures.⁵⁶

Although it had given notice that it did not intend to participate, all communications pertaining to the case were transmitted by ITLOS to the Russian Federation, and the Russian Federation was informed that ITLOS was ready to take into account any observations that might be presented to it by the Russian Federation before the closure of the hearing.⁵⁷

The Russian Federation did make its position known to the Tribunal on one issue – the request by Greenpeace International to intervene. By letter dated 30 October 2013, Greenpeace International requested the Tribunal for permission to file submissions as *amicus curiae*.⁵⁸ On the following day, the Registrar invited the Parties to provide comments on the request submitted by Greenpeace International.⁵⁹ By a communication dated 6 November 2013, the Embassy of the Russian Federation in the Federal Republic of Germany informed the Tribunal that '[t]aking into account the non-governmental character of Greenpeace International the Russian Side sees no reason for granting to this organisation the possibility to furnish information to the Tribunal in the case concerning the

⁴⁹ UNCLOS, Annex VII, Art 6(b).

⁵⁰ UNCLOS, Annex VII, Art 9.

⁵¹ *Ibid.*

⁵² UNCLOS, Annex VII, Art 9.

⁵³ *Note Verbale* from the People's Republic of China to the Philippines dated 19 February 2013.

⁵⁴ *Note Verbale* from the Russian Federation to the Kingdom of the Netherlands dated 22 October 2013.

⁵⁵ *Note Verbale* from the Russian Federation to ITLOS dated 22 October 2013.

⁵⁶ Letter of the Agent of the Netherlands to ITLOS dated 24 October 2013.

⁵⁷ *The "Arctic Sunrise" Case, supra* note 36, at para 13.

⁵⁸ *The "Arctic Sunrise" Case, supra* note 36, at para 15.

⁵⁹ *The "Arctic Sunrise" Case, supra* note 36, at para 16.

vessel Arctic Sunrise’ and underlined ‘that this transmission of the Russian position to the tribunal can in no way be interpreted as a form of participation of the Russian Side in the above mentioned case’.⁶⁰

Since the Russian Federation did not make any further communications, ITLOS had to proceed with the request for provisional measures made by the Netherlands without the participation of the Russian Federation in the proceedings. In its Order for provisional measures, ITLOS noted that the Russian Federation had been given ample opportunity to present its observations to ITLOS, but that it declined to do so.⁶¹ It also noted that the Russian Federation could have facilitated the task of ITLOS by furnishing it with fuller information on questions of fact and of law,⁶² and that it was difficult for ITLOS, in the circumstances of this case, to evaluate the nature and scope of the respective rights of the parties to be preserved by provisional measures.⁶³ However, it further noted that the Netherlands should not be put at a disadvantage because of the non-appearance of the Russian Federation in the proceedings.⁶⁴ Therefore, it stated that ITLOS must identify and assess the respective rights of the parties involved on the best available evidence.⁶⁵

In the *Arctic Sunrise* case, Judge *ad hoc* David Anderson made the following comments about the non-appearance of The Russian Federation:

In considering the request submitted by the Netherlands, the Tribunal did not have the benefit of receiving the Russian Federation’s account of the facts, notably the events occurring on 18 and 19 September 2013 prior to the arrest of the *Arctic Sunrise*, as well as the Russian Federation’s arguments on points of law. While the position of the Netherlands was made clear, the stance of the Russian Federation had to be taken from its diplomatic communications, legislation and the decisions of courts in the Russian Federation. Unfortunately, these materials were both incomplete and in places inconsistent, making the task of the Tribunal more difficult. Thus, the decision of the Russian Federation not to appear in this case is to be regretted. Non-appearance does not serve the efficient application of Part XV of the Convention or, more widely, the rule of law in international relations.⁶⁶

In their Joint Separate Opinion in the *Arctic Sunrise* case, Judges Wolfrum and Kelly discussed the non-appearance of a party to the case. They stated that:

. . . the Order of the Tribunal could have shed some further light on how non-appearance is to be seen under a mandatory dispute settlement system such as the one established under Part XV of the Convention. The non-appearing party not only weakens its own

⁶⁰ *The “Arctic Sunrise” Case*, *supra* note 36, at para 19.

⁶¹ *The “Arctic Sunrise” Case*, *supra* note 36, at para 50.

⁶² *The “Arctic Sunrise” Case*, *supra* note 36, at para 54.

⁶³ *The “Arctic Sunrise” Case*, *supra* note 36, at para 55.

⁶⁴ *The “Arctic Sunrise” Case*, *supra* note 36, at para 56.

⁶⁵ *The “Arctic Sunrise” Case*, *supra* note 36, at para 57.

⁶⁶ *The “Arctic Sunrise” Case*, Declaration of Judge *Ad Hoc* Anderson, at para 2.

position concerning the legal dispute but also hampers the other party in its pursuit of its rights and interests in the legal discourse of the proceedings in question. But, more importantly, it hinders the work of the international court or tribunal in question. The international court or tribunal may in such a situation have to rely on the facts and the legal arguments presented by one side without having the benefit of hearing the other side. This cannot be fully compensated by recourse to facts which are in the public domain.⁶⁷

Judges Wolfrum and Kelly then went further. They stated that the non-appearance of a party is contrary to the object and purpose of the dispute settlement provisions in UNCLOS and that ITLOS was overly diplomatic in not pointing out its consequences:

However, there is a more fundamental consideration to be mentioned. In the case of States having consented to a dispute settlement system in general – such as the Netherlands and the Russian Federation by ratifying the Convention on the Law of the Sea – non-appearance is contrary to the object and purpose of the dispute settlement system under Part XV of the Convention. Surely, as stated in article 28 of the Statute of the Tribunal, the non-appearing State remains a party to the proceedings and is bound by the decisions taken. However, essential as this may be this does not cover the core of the issue. Judicial proceedings are based on a legal discourse between the parties and the co-operation of both parties with the international court or tribunal in question. Non-appearance cripples this process. As Sir Gerald Fitzmaurice put it in his article on “The Problem of the ‘Non-Appearing’ Defendant Government” (BYIL (1980), vol. 51 (1), p. 89 at 115), non-appearance leaves the “outward shell” of the dispute settlement system intact but washes away the “core”. For that reason article 28 of the Statute should not be understood as attributing a right to parties to a dispute not to appear, it rather reflects the reality that some States may, in spite of their commitment to co-operate with the international court or tribunal in question, take this course of action. The Order of the Tribunal does not express these concerns sufficiently and appears to be over-diplomatic.⁶⁸

Annex VII of UNCLOS provides for the constitution of the arbitral tribunal, even when one of the parties to the disputes decides not to participate in the proceeding. For example, in the arbitration between Philippines and China, the Philippines appointed ITLOS Judge Rudiger Wolfrum of Germany in its notification to institute arbitration proceedings.⁶⁹ China gave notice that it did not intend to participate in the proceedings.⁷⁰ When China failed to appoint an arbitrator within the specified time, the Philippines requested the ITLOS President to appoint an arbitrator on China’s behalf, and he appointed ITLOS Judge Stanislaw Pawlak of Poland.⁷¹ When the time for the appointment of the

⁶⁷ *The “Arctic Sunrise” Case*, Joint Separate Opinion of Judge Wolfrum and Judge Kelly, at para 5.

⁶⁸ *Ibid*, at para 6.

⁶⁹ Notification and Statement of Claim of the Philippines with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea, dated 22 January 2013 (*Philippines v China Case*).

⁷⁰ *Note Verbale* from the People’s Republic of China to the Philippines, *supra* note 53.

⁷¹ International Tribunal for the Law of the Sea, Press Release, ITLOS/Press 191, ‘Arbitrators Appointed in the Arbitral Proceedings Instituted by the Republic of the Philippines against the People’s Republic of China’

remaining three arbitrators passed, the Philippines requested the ITLOS President to appoint the remaining three arbitrators. The President then appointed Judge Jean-Pierre Cot of France, Professor Albert Soons of the Netherlands and former ITLOS President Thomas Mensah of Ghana, and named Thomas Mensah as President of the arbitral tribunal.⁷² All four of the arbitrators appointed by the ITLOS President were from the list of arbitrators maintained by the Secretary-General of the United Nations.⁷³

VIII. PROCEDURE OF THE TRIBUNAL

Annex VII provides that unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case.⁷⁴ In other words, if the parties to dispute cooperate with one another, they can establish the rules of procedure. However, if the parties cannot agree or if one party does not appear, the arbitral tribunal will determine its own procedure in consultation with the parties.

In most Annex VII arbitration proceedings, the Permanent Court of Arbitration at The Hague administers the arbitration.⁷⁵ The rules of procedure will provide for the seat of the arbitration, but may also provide that hearings may be held in other locations.⁷⁶

The rules of procedure established for the case usually state whether existence of the arbitration will be public.⁷⁷ The rules will also set out the extent to which the Registry will publish the basic information about the case, including procedural orders, rules of procedure, written pleadings and transcripts of oral hearings, as may be directed by the arbitral tribunal.⁷⁸

(25 April 2013), online:

<https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_191_E.pdf>.

⁷² Note that originally, the President of ITLOS appointed Mr Pinto as the president of the Arbitral Tribunal, see *ibid*. Judge Mensah was appointed as the president of the arbitral tribunal after Mr Pinto resigned, see International Tribunal for the Law of the Sea, Press Release, ITLOS/Press 197, 'New Arbitrator and President Appointed in the Arbitral Proceedings Instituted by the Republic of the Philippines against the People's Republic of China' (24 June 2013), online: <

https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_197_E.pdf>.

⁷³ See Annex 1 - Notifications Made Under Article 2 Of Annexes V And VII (List Of Conciliators And Arbitrators).

⁷⁴ UNCLOS, Annex VII, Art 5.

⁷⁵ See for example, Rules of Procedure for the Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea between People's Republic of Bangladesh and the Republic of India, Art 8; Rules of Procedure of Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea between the Republic of the Philippines and the People's Republic of China, PCA Case No 2013-19, (27 August 2013) (Rules of Procedure of Philippines/China Arbitration), Art 14.

⁷⁶ *Ibid*.

⁷⁷ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 16.

⁷⁸ *Ibid*.

A. Written Submissions and Hearings

The Rules of Procedure usually provide that as soon as practicable after its constitution and after inviting the Parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration.⁷⁹ The provisional timetable includes the time for the parties to make written submissions to the tribunal.⁸⁰ The Rules of Procedure generally provide that written pleadings shall be accompanied by all documents and other evidence relied upon in support of any facts alleged therein, and that in so far as is possible, all documentary evidence shall be submitted with the respective Memorial and Counter-Memorial of the Parties.⁸¹

If there is no challenge to the jurisdiction or if one of the parties fails to participate, the rules may request the applicant to make their written submission on all matters, including jurisdiction and other preliminary matters as well as their arguments on the merits.⁸² The Rules of Procedure usually also provide that within a certain period after the submission of written pleadings, there will be a hearing at which the Parties may make their oral submissions.⁸³

The Rules of Procedure generally also provide that the arbitral tribunal may take all appropriate measures in order to establish the facts including, when necessary, the conduct of a visit to the localities to which the case relates, and state that the Parties shall afford the arbitral tribunal all reasonable facilities in the event of such a visit.⁸⁴ The Rules of Procedure also provide that if any of the Parties so requests, the arbitral tribunal shall hold hearings for the presentation evidence by fact witnesses and experts, or for oral argument.⁸⁵ In the absence of such a request by one of the Parties, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.⁸⁶

B. Preliminary Objections

The Rules of Procedure of the tribunal usually provide that the arbitral tribunal shall rule on any plea concerning its jurisdiction as a preliminary question, unless it determines, after seeking the views of the Parties, that the objection to its jurisdiction does not possess an exclusively preliminary character, in which case it shall rule on such a plea in conjunction with the merits.⁸⁷ In the *Philippines v China* case, the Rules of Procedure provide that a plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the Counter-Memorial.⁸⁸ This rule seems designed to give China the option of reconsidering its decision not to appear. It provides China with the opportunity

⁷⁹ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 10(2).

⁸⁰ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 17(1).

⁸¹ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 18.

⁸² See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 25.

⁸³ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 23.

⁸⁴ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 22(2).

⁸⁵ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 10(3).

⁸⁶ *Ibid.*

⁸⁷ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 20(3).

⁸⁸ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 20(2).

to challenge the jurisdiction of the tribunal as a preliminary matter even after the Philippines has made its written submission.

The general principle governing challenges to the jurisdiction of an Annex VII arbitral tribunal is the same as for other courts and tribunals that can hear disputes on the interpretation or application of the provisions of UNCLOS.⁸⁹ Article 288(5) of UNCLOS provides that in the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal. This is known as the principle of *compétence de la compétence*.

C. Intervention by Third States

Unlike judicial proceedings before ITLOS or the ICJ, there are no provisions in Annex VII providing for the intervention by third States in the proceedings. The rules of procedure for the cases also do not provide for intervention by third States. This is because arbitration is usually engaged in with the consent of the parties. Therefore, if any exception would be made, it is likely to be only with the consent of both parties to the case.

The Rules of Procedure in the *Philippines v China* case have no provision on intervention by third parties even though there are other claimant States that have interests in the case. The most that can be said is that the Rules of Procedure in the case neither expressly prohibit intervention by third parties nor expressly permit intervention by third parties. If another interested State such as Viet Nam were to make a formal request to the arbitral tribunal to intervene in the case, the Tribunal would have to decide whether to permit the intervention after consulting both parties. The Tribunal may be reluctant to allow intervention without both parties consenting, and given that China is not participating in the case, it may be difficult to permit intervention in the absence of its express consent.

D. Applicable law

The law to be applied by an Annex VII arbitral tribunal is the same as for other courts and tribunals that can hear cases on the interpretation or application of the provisions in UNCLOS.⁹⁰ Article 293 of UNCLOS provides that the court or tribunal having jurisdiction shall apply UNCLOS and other rules of international law not incompatible with UNCLOS.

E. Decision and Award of the Tribunal

Decisions of the arbitral tribunal shall be taken by a majority vote of its members.⁹¹ The award of the arbitral tribunal shall be confined to the subject-matter of the dispute and state the reasons on

⁸⁹ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 20(1).

⁹⁰ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 13(1).

⁹¹ UNCLOS, Annex VII, Art 8.

which it is based.⁹² Any member of the tribunal may attach a separate or dissenting opinion to the award.⁹³

The award of the arbitral tribunal shall be final and without appeal, unless the parties to the dispute have agreed in advance to an appellate procedure.⁹⁴ The parties to the dispute have an obligation to comply with the award.⁹⁵ As with any decision of a court or tribunal under Part XV of UNCLOS, the award has no binding force except between the parties and in respect of that particular dispute.⁹⁶

F. Expenses of the Tribunal and Costs

Article 7 of Annex VII provides that unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.⁹⁷ Also, the general rule in arbitrations is that each party shall bear its own costs.⁹⁸

IX. ARBITRATION CASES UNDER ANNEX VII OF UNCLOS

A total of fifteen cases have been initiated between States under Annex VII arbitration in the twenty years since UNCLOS entered into force in November 1994.⁹⁹

Some general observations will be made.

First, only six cases were initiated in the first ten years.¹⁰⁰ However, five cases were initiated from October 2012 to October 2013.¹⁰¹ This suggests that States are becoming more comfortable with instituting cases under Part XV of UNCLOS.

Second, in three cases the parties agreed after the proceedings had been initiated to refer the case to ITLOS rather than proceed to arbitration.¹⁰²

⁹² UNCLOS, Annex VII, Art 10.

⁹³ *Ibid.*

⁹⁴ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 26(2).

⁹⁵ *Ibid.*

⁹⁶ UNCLOS, Art 296(2).

⁹⁷ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 31(1).

⁹⁸ See for example, Rules of Procedure of Philippines/China Arbitration, *supra* note 75, Art 32(1).

⁹⁹ See Annex 2 - Summary Of Cases Instituted Under Annex VII Arbitration.

¹⁰⁰ *The M/V 'SAIGA' (No. 2) Case*, *supra* note 13; *Southern Bluefin Tuna Case between Australia and Japan and between New Zealand and Japan*, Award on Jurisdiction and Admissibility (4 August 2000); *The MOX Plant Case*, *supra* note 34; *The Land Reclamation Case*, *supra* note 35; *Guyana v Suriname*, Award of the Arbitral Tribunal (17 September 2007); *Barbados/Trinidad and Tobago*, *supra* note 29.

¹⁰¹ *The ARA Libertad Arbitration (Argentina v Ghana)* (settled in September 2012); *The Philippines v China Case*, *supra* note 69 (instituted in January 2013); *The Atlanto-Scandian Herring Arbitration (The Kingdom of Denmark in respect of the Faroe Islands v The European Union)* (instituted in August 2013); *The "Arctic Sunrise" Case*, *supra* note 36 (instituted in October 2013); *The Duzgit Integrity Arbitration (Malta v São Tomé and Príncipe)*, *supra* note 38 (instituted in October 2013).

Third, in only one case did the arbitral tribunal find that it had no jurisdiction.¹⁰³

Fourth, in three of the fifteen cases instituted under Annex VII, the State initiating the proceedings made a request to ITLOS for provisional measures, pending the establishment of the arbitral tribunal.¹⁰⁴

X. CONCLUSIONS

States parties to UNCLOS have agreed that dispute settlement system in Part XV of UNCLOS is an integral part of the Convention which States must accept as part of the ‘package deal’ when they become parties to the Convention. Because the dispute settlement procedures are compulsory, States parties have in effect consented in advance to the compulsory procedures entailing binding decisions in Section 2 of Part XV of UNCLOS. These procedures provide that any dispute between two parties on the interpretation or application of a provision of UNCLOS that cannot be resolved through negotiation may, at the request of either party to the dispute, be subject to the compulsory procedures entailing binding decisions that are set out in Section 2 of Part XV of UNCLOS.¹⁰⁵ The ‘default’ procedure that will apply in most cases involving disputes between States in Asia is arbitration according to Annex VII of UNCLOS.¹⁰⁶

The rules and procedures for arbitral tribunals established under Annex VII of UNCLOS are set out in Annex VII as well as in the Rules of Procedure of each arbitral proceeding. If the parties can reach an agreement, they can establish their own rules of procedure for the proceeding. In the absence of an agreement, the arbitral tribunal will issue rules of procedure for that case in consultation with the parties.¹⁰⁷

Generally, an arbitral tribunal established under Annex VII of UNCLOS has five arbitrators.¹⁰⁸ Each State party may choose one, and the remaining three are selected by agreement of the parties, or if they cannot agree, by the President of ITLOS. In such a case, the President of ITLOS can only appoint arbitrators from the list of arbitrators nominated by States parties to UNCLOS as maintained by the Secretary-General of the United Nations.¹⁰⁹ Interestingly, very few Asian countries have exercised their right to appoint arbitrators to this list.¹¹⁰

¹⁰² *The M/V ‘SAIGA’ (No. 2) Case*, *supra* note 13; *Bangladesh/Myanmar*, *supra* note 14; *The M/V ‘Virginia G’ Case*, *supra* note 15.

¹⁰³ *Southern Bluefin Tuna Case*, *supra* note 100.

¹⁰⁴ *The MOX Plant Case*, *supra* note 34; *The Land Reclamation Case*, *supra* note 35; *The “Arctic Sunrise” Case*, *supra* note 36.

¹⁰⁵ UNCLOS, Art 286.

¹⁰⁶ UNCLOS, Art 287(3)&(5).

¹⁰⁷ UNCLOS, Annex VII, Art 5.

¹⁰⁸ Except in the *Duzgit Integrity Arbitration (Malta v São Tomé and Príncipe)*, where the parties agreed to a three-member arbitral tribunal, *supra* note 38.

¹⁰⁹ UNCLOS, Annex VII, Art 3(e).

¹¹⁰ See Annex 3 - Members of Arbitration Tribunals Constituted Under Annex VII Of UNCLOS.

Relatively few Annex VII arbitrations were initiated in the first twenty years. However, since UNCLOS came into force there seems to be a trend for more States to invoke the compulsory procedures in section 2 of Part XV, and in Asia, that usually means arbitration under Annex VII. Therefore, it might be in the interests of all governments in Asia to undertake a careful study of the provisions in Part XV of UNCLOS in general and of Annex VII arbitration in particular.

Special problems also arise when one of the parties to a dispute decides not to participate in the proceedings. Some of the issues concerning non-appearance have been discussed in the order for provisional measures in the *Arctic Sunrise* case between the Netherlands and the Russian Federation.¹¹¹ Non-appearance has also arisen as an issue in the case between the Philippines and China.¹¹²

¹¹¹ *The “Arctic Sunrise” Case*, *supra* note 36.

¹¹² *The Philippines v China Case*, *supra* note 69.

XI. ANNEX 1. NOTIFICATIONS MADE UNDER ARTICLE 2 OF ANNEXES V AND VII (LIST OF CONCILIATORS AND ARBITRATORS)

As of 27 August 2014

No.	Participant	Nominations:	Date of deposit of notification with the Secretary-General:
AFRICAN STATES			
1.	<u>Ghana</u>	H.E. Judge Dr. Thomas A. Mensah (conciliator and arbitrator) (Former Judge and First President of the UN Tribunal of the Law of the Sea (ITLOS))	30 May 2013
		Professor Martin Tsamenyi, Professor of Law (conciliator and arbitrator) University of Wollongong, Australia and Director, Australian National Center for Ocean Resources and Security (ANCORS)	30 May 2013
2.	South Africa	Judge Albertus Jacobus Hoffmann, Vice-President, International Tribunal for the Law of the Sea, Arbitrator	25 April 2014
3.	<u>Sudan</u>	Sayed/Shawgi Hussain, Arbitrator	8 Sept 1995
		Dr. Ahmed Elmufti, Arbitrator	
		Dr. Abd Elrahman Elkhalifa, Conciliator	
		Sayed/Eltahir Hamadalla, Conciliator	
		Prof. Elihu Lauterpacht CBE QC, Arbitrator	
		Sir Arthur Watts KCMG QC, Arbitrator	
4.	<u>United Republic of Tanzania</u>	Ambassador James Kateka, Judge of the International Tribunal for the Law of the Sea, Conciliator and Arbitrator	18 September 2013
ASIAN STATES			
1.	Indonesia	Prof. Dr. Hasjim Djalal, M.A., Conciliator and Arbitrator	3 Aug 2001

No.	Participant	Nominations:	Date of deposit of notification with the Secretary-General:
		Dr. Ety Roesmaryati Agoes, SH, LLM, Conciliator and Arbitrator	
		Dr. Sudirman Saad, D.H., M.Hum, Conciliator and Arbitrator	
		Lieutenant Commander Kresno Bruntoro, SH, LLM, Conciliator and Arbitrator	
2.	Japan	Judge Shunji Yanai, President of the International Tribunal of the Law of the Sea, Conciliator and Arbitrator	4 October 2013
		Judge Hisashi Owada, Judge, International Court of Justice, Arbitrator	28 September 2000
		Dr. Nisuke Ando, Professor Emeritus, Kyoto University, Arbitrator	28 September 2000
3.	Mongolia	Professor Rüdiger Wolfrum, Arbitrator	
		Professor Jean-Pierre Cot, Arbitrator	22 Feb 2005
4.	Republic of Korea	Conciliator and Arbitrator: Professor Jin-Hyun Paik (Mr.)	14 February 2013
5.	Sri Lanka	Hon. M.S. Aziz, P.C., Conciliator and Arbitrator	17 Jan 1996
		C. W. Pinto, Secretary-General of the Iran-US Tribunal in the Hague, Conciliator and Arbitrator	17 Sept 2002
EASTERN EUROPEAN STATES			
1.	Czech Republic	Dr. Václav Mikulka, Conciliator and Arbitrator	27 March 2014
2.	<u>Estonia</u>	Mrs. Ene Lillipuu, Head of the Legal Department of the Estonian Maritime Administration, Conciliator and Arbitrator.	18 December 2006

No.	Participant	Nominations:	Date of deposit of notification with the Secretary-General:
		Mr. Heiki Lindpere, the Director of the Institute of Law of the University of Tartu, Conciliator and Arbitrator	
3.	Poland	Mr. Janusz Symonides, Conciliator and Arbitrator	14 May 2004
		Mr. Stanislaw Pawlak, Conciliator and Arbitrator	
		Mrs. Maria Dragun-Gertner, Conciliator and Arbitrator	
4.	<u>Romania</u>	Mr. Bogdan Aurescu, Secretary of State, Ministry of Foreign Affairs, Member of the Permanent Court of Arbitration, Arbitrator	2 Oct 2009
		Mr. Cosmin Dinescu, Director General for Legal Affairs, Ministry of Foreign Affairs, Arbitrator	2 Oct 2009
5.	<u>Russian Federation</u>	Vladimir S. Kotliar, Arbitrator	26 May 1997
		Professor Kamil A. Bekyashev, Arbitrator	4 Mar 1998
		Mr. Alexander N. Vylegjanin, Director of the Legal Department of the Council for the Study of Productive Forces of the Russian Academy of Science, Arbitrator	17 Jan 2003
6.	Slovakia	Dr. Marek Smid, International Law Department of the Ministry of Foreign Affairs of Slovakia, Conciliator	
		Dr. Peter Tomka, Judge of the International Court of Justice, Arbitrator	9 July 2004
LATIN AMERICAN AND CARRIBEAN STATES			
1.	Argentina	Dr. Frida María Armas Pfirter, Arbitrator and Conciliator	28 Sep 2009
		Ambassador Horacio Adolfo Basabe, Conciliator and Arbitrator	4 September 2013

No.	Participant	Nominations:	Date of deposit of notification with the Secretary-General:
		Professor Marcelo Gustavo Kohen, Conciliator and Arbitrator	4 September 2013
		Minister Holger Federico Martinsen, Conciliator and Arbitrator	4 September 2013
2.	<u>Brazil</u>	Walter de Sá Leitão, Conciliator and Arbitrator	10 Sep 2001
3.	<u>Chile</u>	Helmut Brunner Nöer, Conciliator	18 Nov 1998
		Rodrigo Díaz Albónico, Conciliator	
		Carlos Martínez Sotomayor, Conciliator	
		Eduardo Vío Grossi, Conciliator	
		José Miguel Barros Franco, Arbitrator	
		María Teresa Infante Caffi, Arbitrator	
		Edmundo Vargas Carreño, Arbitrator	
		Fernando Zegers Santa Cruz, Arbitrator	
4.	<u>Costa Rica</u>	Carlos Fernando Alvarado Valverde, Conciliator and Arbitrator	15 Mar 2000
5.	<u>Guatemala</u>	Minister Counsellor Lester Antonio Ortega Lemus, Conciliator and Arbitrator	26 March 2014
6.	<u>Trinidad and Tobago</u>	Mr. Justice Cecil Bernard, Judge of the Industrial Court of the Republic of Trinidad and Tobago, Arbitrator	17 Nov 2004
WESTERN EUROPEAN AND OTHER STATES			
1.	<u>Australia</u>	Sir Gerard Brennan AC KBE, Arbitrator	19 Aug 1999
		Mr. Henry Burmester QC, Arbitrator	
		Professor Ivan Shearer AM, Arbitrator	

No.	Participant	Nominations:	Date of deposit of notification with the Secretary-General:
2.	<u>Austria</u>	Professor Dr. Gerhard Hafner, Department of International Law and International Relations, University of Vienna, Member of the Permanent Court of Arbitration, The Hague, Conciliator at the OSCE Court of Conciliation and Arbitration, Former Member of the International Law Commission, Conciliator and Arbitrator	9 January 2008
		Professor Dr. Gerhard Loibl, Professor at the Diplomatic Academy of Vienna, Conciliator and Arbitrator	
		Ambassador Dr. Helmut Tichy, Deputy Head of the Office of the Legal Adviser, Austrian Federal Ministry for European and International Affairs, Conciliator and Arbitrator	
		Ambassador Dr. Helmut Türk, Judge at the International Tribunal for the Law of the Sea, Member of the Permanent Court of Arbitration, The Hague, Conciliator and Arbitrator	
3.	<u>Belgium</u>	Professor Erik Franckx, President of the Department of International and European Law at the Vrije University Brussels, Arbitrator	1 May 2014
		Mr. Philippe Gautier, Registrar of the International Tribunal for the Law of the Sea, Arbitrator	1 May 2014
4.	Cyprus	Ambassador Andrew Jacovides, Conciliator and Arbitrator	23 Feb 2007
5.	<u>Finland</u>	Professor Kari Hakapää, Conciliator and Arbitrator	
		Professor Martti Koskenniemi, Conciliator and Arbitrator	
		Justice Gutav Möller, Conciliator and Arbitrator	

No.	Participant	Nominations:	Date of deposit of notification with the Secretary-General:
		Justice Pekka Vihervuori, Conciliator and Arbitrator	25 May 2001
6.	<u>France</u>	Daniel Bardonnnet, Arbitrator	4 Feb 1998
		Pierre-Marie Dupuy, Arbitrator	
		Jean-Pierre Queneudec, Arbitrator	
		Laurent Lucchini, Arbitrator	
7.	Germany	Dr. (Ms.) Renate Platzoeder, Arbitrator	25 Mar 1996
8.	<u>Iceland</u>	Ambassador Gudmundur Eiriksson, Conciliator and Arbitrator	13 September 2013
		Mr. Tomas H. Heidar, Legal Adviser, Ministry for Foreign Affairs, Conciliator and Arbitrator	13 September 2013
9.	<u>Italy</u>	Professor Umberto Leanza, Conciliator and Arbitrator	21 Sep 1999
		Ambassdor Luigi Vittorio Ferraris, Conciliator	
		Ambassador Giuseppe Jacoangeli, Conciliator	
		Professor Tullio Scovazzi, Arbitrator	
		Paolo Guido Spinelli, Former Chief of the Service for Legal Affairs, Diplomatic Disputes and international Agreements of the Italian Ministry of Foreign Affairs, Conciliator	28 June 2011
		Maurizio Maresca, Arbitrator	28 June 2011
		Tullio Treves, Arbitrator	28 June 2011
10.	Lebanon	Dr. Joseph Akl, Judge in the International Tribunal for the Law of the Sea, Arbitrator	31 January 2014

No.	Participant	Nominations:	Date of deposit of notification with the Secretary-General:
11.	<u>Mexico</u>	Ambassador Alberto Székely Sánchez, Special Adviser to the Secretary for International Waters Affairs, Arbitrator	9 Dec 2002
		Dr. Alonso Gómez Robledo Verduzco, Researcher, Institute of Legal Research, National Autonomous University of Mexico, Member of the Inter-American Legal Committee of the Organization of American States, Arbitrator	
		Frigate Captain JN. LD. DEM. Agustín Rodríguez Malpica Esquivel, Chief, Legal Unit, Secretariat of the Navy, Arbitrator	
		Frigate Lieutenant SJN.LD. Juan Jorge Quiroz Richards, Secretariat of the Navy, Arbitrator	
		Ambassador José Luis Vallarta Marrón, Former Permanent Representative of Mexico to the International Seabed Authority, Conciliator	
		Dr. Alejandro Sobarzo, Member of the national delegation to the Permanent Court of Arbitration, Conciliator	
		Joel Hernández García, Deputy Legal Adviser, Ministry of Foreign Affairs, Conciliator	
		Dr. Erasmo Lara Cabrera, Director of International Law III, Legal Adviser, Ministry of Foreign Affairs, Conciliator	
12.	<u>Netherlands</u>	E. Hey, Arbitrator	9 Feb 1998
		Professor A. Soons, Arbitrator	
		A. Bos, Arbitrator	
		Professor Dr. Barbara Kwiatkowska, Arbitrator	29 May 2002

No.	Participant	Nominations:	Date of deposit of notification with the Secretary-General:
13.	<u>Norway</u>	Carsten Smith, President of the Supreme Court, Conciliator and Arbitrator	22 Nov 1999
		Karin Bruzelius, Supreme Court Judge, Conciliator and Arbitrator	
		Hans Wilhelm Longva, Director General, Department of Legal Affairs, Ministry of Foreign Affairs, Conciliator and Arbitrator	
		Ambassador Per Tresselt, Conciliator and Arbitrator	
14.	<u>Portugal</u>	Professor José Manuela Pureza, Conciliator	5 Oct 2011
		Dr. João Madureira, Conciliator	5 Oct 2011
		Dr. Mateus Kowalski, Conciliator	5 Oct 2011
		Dr. Tiago Pitta e Cunha, Conciliator	5 Oct 2011
		Professor Nuno Sérgio Marques Antunes, Arbitrator	5 Oct 2011
15.	<u>Spain</u>	José Antonio de Yturriaga Barberán, Ambassador at large, Arbitrator and Conciliator	23 Jun 1999
		Juan Antonio Yáñez-Barnuevo García, Ambassador at large, Conciliator and Arbitrator	26 March 2012
		Aurelio Pérez Giralda, Chief, International Legal Advisory Assistance, Ministry of Foreign Affairs, Conciliator	
		José Antonio Pastor Ridruejo, Judge, European Court of Human Rights, Arbitrator	
		Da Concepción Escobar Hernández, Conciliator and Arbitrator	26 March 2012

No.	Participant	Nominations:	Date of deposit of notification with the Secretary-General:
16.	<u>Sweden</u>	Dr. Marie Jacobsson, Principal Legal Advisor on International Law, Ministry for Foreign Affairs, Arbitrator	2 June 2006
		Dr. Said Mahmoudi, Professor of International Law, University of Stockholm, Arbitrator	
17.	<u>United Kingdom of Great Britain and Northern Ireland</u>	Sir Michael Wood, Arbitrator and Conciliator	2 November 2010
		Sir Elihu Lauterpacht QC, Arbitrator and Conciliator	19 February 1998 and 2 November 2010
		Professor Vaughan Lowe QC, Arbitrator and Conciliator	2 November 2010
		Mr. David Anderson, Arbitrator and Conciliator	14 September 2005 and 2 November 2010

XII. ANNEX 2. SUMMARY OF CASES INSTITUTED UNDER ANNEX VII ARBITRATION

1. Saint Vincent and the Grenadines v. Guinea (The M/V Saiga)

Saint Vincent and the Grenadines had, on 13 November 1997, submitted a case to ITLOS for the prompt release by Guinea of the oil tanker M/V “SAIGA” and its crew pursuant to Article 292 of UNCLOS. The vessel and its crew had been arrested and held by Guinea since 28 October 1997. ITLOS ordered the immediate release of the vessel on the deposit by Saint Vincent and the Grenadines of USD 400,000 as security, in addition to the USD 1 million value cargo of gasoil that had been discharged from the vessel by the Guinean authorities.

Subsequently, Saint Vincent and the Grenadines posted a USD 400,000 Bank Guarantee with the Agent of Guinea, but Guinea did not accept the terms of the Bank Guarantee and requested changes be made to them. The changes in the terms requested by Guinea were considered “unreasonable and either irrelevant or unacceptable” by Saint Vincent and the Grenadines. In addition, it was alleged that Guinea had also proceeded to file criminal charges against the Master of the M/V “SAIGA” resulting in a Guinean court imposing a fine of approximately USD 15 million while making Saint Vincent and the Grenadines civilly liable for the fine imposed upon the Master of the vessel.

In January, 1998, the Government of Saint Vincent and the Grenadines decided to submit its dispute with Guinea to an arbitration proceeding under Annex VII of UNCLOS. In view of the delay in constituting an arbitral tribunal, the Government of Saint Vincent and the Grenadines requested ITLOS to prescribe provisional measures under Article 290, pending the constitution of the arbitral tribunal. [*The M/V “SAIGA” (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)*]. On 11 March 1998, ITLOS issued an order granting provisional measures.

In the meantime, the Parties arrived at an agreement on 20 February 1998 to submit the dispute on the merits to ITLOS rather than to arbitration under Annex VII. ITLOS delivered judgment in the case on the merits on 1 July 1999.

2. New Zealand v Japan, Australia v Japan (Southern Blue Fin Tuna Case)

The dispute related to Japan’s unilateral declaration of an ‘experimental fishing program’, which involved catches of southern bluefin tuna over and above its national allocation decided by the Commission for the Conservation of Southern Bluefin Tuna. A dispute arose on whether Japan’s actions were a violation of its obligations under UNCLOS to preserve and manage fish stocks.

On 30 July 1999, Australia and New Zealand initiated proceedings under the UNCLOS dispute settlement provisions for arbitration under Annex VII. Pending the constitution of an arbitral tribunal, Australia and New Zealand sought provisional measures from ITLOS. ITLOS prescribed provisional measures in an order of 27 August 1999.

The Annex VII arbitral tribunal consisted of Judge Stephen M. Schwebel, President, H.E. Judge Florentino Feliciano, The Rt. Hon. Justice Sir Kenneth Keith, KBE, H.E. Judge Per Tresselt and Professor Chusei Yamada. The case before the arbitral tribunal was administered by the International

Settlement of Investment Disputes (ICSID) in Washington DC. The arbitral tribunal gave its award on jurisdiction and admissibility on 4 August 2000. It decided that it lacked jurisdiction over the dispute. It also revoked the provisional measures that had been ordered by ITLOS.

3. Ireland v. United Kingdom (MOX Plant Case)

In November 2001, arbitration proceedings were initiated by Ireland pursuant to Annex VII of the UNCLOS. The arbitral tribunal consisted of: H.E. Judge Thomas A. Mensah (President), Prof. James Crawford, SC, Maître L. Yves Fortier CC QC, Prof. Gerhard Hafner, Rt Hon. Lord Mustill, PC, Sir Arthur Watts, KCMG QC (deceased November 16, 2007).

On 9 November 2001, pending the constitution of the arbitral tribunal to be established under Annex VII, Ireland made a request to ITLOS for the prescription of provisional measures pursuant to Article 290 of UNCLOS. The Order for provisional measures was granted on 3 November 2001.

The arbitral proceedings under Annex VII were terminated by a procedural order of the Tribunal on 6 June 2008 after withdrawal by Ireland of the claim against the United Kingdom.

4. Malaysia v. Singapore (Land Reclamation by Singapore in the Straits of Johor)

On 4 July 2003, this case was instituted by Malaysia against Singapore pursuant to Article 287 and Article 1 of Annex VII of UNCLOS. The arbitral tribunal consisted of Mr. M.C.W. Pinto (President), Dr. Kamal Hossain, Professor Bernard H. Oxman, Professor Ivan Shearer and Sir Arthur Watts.

Pending the constitution of the arbitral tribunal to be established under Annex VII, Malaysia made a request to ITLOS for the prescription of provisional measures pursuant to Article 290 of UNCLOS. The Order for provisional measures was delivered on 8 October 2003.

The parties signed a Settlement Agreement on 26 April 2005, and an Award on Agreed Terms was issued by the Annex VII arbitral tribunal on 1 September 2005. Consequently, the case was settled amicably without any hearing on the merits before the arbitral tribunal.

5. Barbados v. Trinidad and Tobago (Maritime Boundary)

On 16 February 2004, Barbados instituted proceedings against the Republic of Trinidad and Tobago pursuant to Article 287 and Article 1 of Annex VII of UNCLOS. The case concerns the delimitation of the exclusive economic zone and continental shelf between Barbados and the Republic of Trinidad and Tobago. The arbitral tribunal consisted of Judge Stephen Schwebel (President), Mr. Ian Brownlie CBE QC, Professor Vaughan Lowe, Professor Francisco Orrego Vicuña and Sir Arthur Watts KCMG QC. The tribunal rendered its Award on 11 April 2006.

6. Guyana v. Suriname (Maritime Boundary)

On 24 February 2004, Guyana gave written notification and a statement of claim to Suriname submitting a dispute concerning the delimitation of its maritime boundary with Suriname to an arbitral tribunal to be constituted under Annex VII of UNCLOS. In accordance with the relevant

provisions of UNCLOS, an arbitral tribunal composed of the following members was constituted: H.E. Mr. Dolliver Nelson (President), Professor Thomas Franck, Professor Hans Smit, Professor Ivan Shearer and Dr. Kamal Hossain. A final award was rendered by the Tribunal on 17 September 2007.

7. Bangladesh v. Myanmar (Bay of Bengal Maritime Boundary)

On 8 October 2009, the People's Republic of Bangladesh instituted arbitral proceedings concerning the delimitation of the maritime boundary between Bangladesh and the Myanmar pursuant to Article 287 and Annex VII, Article 1 of UNCLOS. However, in a letter dated 4 November, 2009 addressed to the President of ITLOS, the Minister of Foreign Affairs of Myanmar made a declaration stating that Myanmar accepts the jurisdiction of ITLOS for the settlement of its dispute with Bangladesh, and in a letter dated 12 December 2009 Bangladesh made a similar declaration. Consequently, the case was heard by ITLOS rather than an Annex VII arbitral tribunal. ITLOS gave its judgment in the case on 14 March 2012.

8. Bangladesh v. India (Bay of Bengal Maritime Boundary)

On 8 October 2009, the People's Republic of Bangladesh instituted arbitral proceedings concerning the delimitation of the maritime boundary between Bangladesh and the Republic of India pursuant to Article 287 and Annex VII, Article 1 of UNCLOS. The Members of the arbitral tribunal were: Professor Dr. Rüdiger Wolfrum (President), Judge Thomas A. Mensah, Dr. Pemmaraju Sreenivasa Rao, Professor Ivan Shearer and Judge Jean-Pierre Cot. The Tribunal issued an Award on 7 July 2014.

9. Republic of Mauritius v. the United Kingdom (Chagos Archipelago Case)

On 20 December 2010, pursuant to Article 287 and Annex VII, Article 1 of UNCLOS, the Republic of Mauritius instituted arbitral proceedings concerning the establishment by the United Kingdom of a Marine Protected Area around the Chagos Archipelago. The Members of the arbitral tribunal are: Professor Ivan Shearer (President), Judge Sir Christopher Greenwood CMG QC, Judge Albert Hoffmann, Judge James Kateka and Judge Rüdiger Wolfrum. From 22 April to 9 May 2014, the Tribunal conducted a hearing on jurisdiction and the merits. The Case is still pending.

10. Panama/Guinea-Bissau (The M/V "Virginia G" Case)

In June 2011, a dispute arose between Panama and Guinea-Bissau regarding a damage claim for the arrest by Guinea-Bissau of the *Virginia G*, a vessel flying the flag of Panama. The dispute between the two countries was initially submitted to Annex VII Arbitration by means of a letter dated 3 June 2011 from Panama to Guinea-Bissau. However, in that letter, Panama suggested that the two Governments agree to transfer the dispute to ITLOS through an exchange of letters.

By letter dated 4 July 2011, the Agent of Panama notified ITLOS that a special agreement had been concluded by an exchange of notes, dated 29 June and 4 July 2011, between the Republic of Panama and the Republic of Guinea-Bissau to submit the dispute to ITLOS. ITLOS delivered its judgment in the case on 14 April 2014.

11. Argentina v. Ghana (The ARA Libertad Arbitration)

On 29 October 2012, the Argentine Republic instituted arbitral proceedings against Ghana pursuant to Article 287 and Annex VII, Article 1 of UNCLOS concerning the detention of and court measures adopted by the Republic of Ghana concerning the Argentine frigate *ARA Libertad*. The members of the arbitral tribunal were: H.E. Judge Bruno Simma (President), H.E. Judge Awn Shawkat Al-Khasawneh, Judge Elsa Kelly, Judge Thomas A. Mensah and Professor Bernard H. Oxman. On 27 September 2013, Argentina and Ghana concluded an Agreement in relation to this dispute at a signing ceremony held before the President of the Tribunal at the Peace Palace in The Hague. As noted in the Agreement, “[o]n June 20, 2013 the Supreme Court of Ghana delivered a judgment which sets out the Ghanaian law with regard to the arrest of warships and which upholds the customary international law position on the immunity of warships.” The Parties agreed that this, and other measures taken by Ghana, “constitute sufficient satisfaction to discharge any injury occasioned by the injunction measure over the Argentine warship – frigate *ARA Libertad*”.

12. Philippines v. People’s Republic of China (Maritime Jurisdiction case)

On 22 January 2013, the Republic of the Philippines instituted arbitral proceedings against the People’s Republic of China under Annex VII to the UNCLOS “with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea.” On 19 February 2013, China presented a Note Verbale to the Philippines in which it described “the Position of China on the South China Sea issues,” and rejected and returned the Philippines’ Notification. The members of the arbitral tribunal are: Judge Thomas A. Mensah (President), Judge Jean-Pierre Cot, Judge Stanislaw Pawlak, Professor Alfred H. A. Soons and Judge Rüdiger Wolfrum. The Tribunal issued Rules of Procedure and is proceeding despite China’s decision not to participate in the proceedings. The Philippines submitted their Memorials in March as directed by the Tribunal. The Tribunal has requested China to submit its Memorial by 15 December 2014. The case is pending.

13. Denmark v. European Union (The Atlanto-Scandian Herring Arbitration)

By letter dated 16 August 2013, the Kingdom of Denmark in respect of the Faroe Islands instituted arbitral proceedings against the European Union under Annex VII of UNCLOS. The dispute concerns the interpretation and application of Article 63(1) of UNCLOS in relation to the shared stock of Atlanto-Scandian herring. The Permanent Court of Arbitration acts as Registry in this arbitration. The members of the arbitral tribunal are: Judge Thomas A. Mensah (Presiding Arbitrator), Professor Gerhard Hafner, Professor Francisco Orrego Vicuña, Dr. M.C.W. Pinto and Judge Rüdiger Wolfrum. The case is pending.

14. Netherlands v. Russia (Arctic Sunrise Arbitration)

On 4 October 2013, the Kingdom of the Netherlands instituted arbitral proceedings against the Russian Federation under Annex VII of UNCLOS. The dispute concerns the boarding and detention of the vessel *Arctic Sunrise* in the exclusive economic zone of the Russian Federation and the detention of the persons on board the vessel by the Russian authorities. The members of the arbitral tribunal

are: Judge Thomas A. Mensah (President), Mr. Henry Burmester, Professor Alfred Soons, Professor Janusz Symonides and Dr. Alberto Székely. The Russian Federation has not appointed an agent.

Pending the establishment of the Annex VII arbitral tribunal, the Netherlands made a request to ITLOS for the prescription of provisional measures. The Russian Federation refused to participate in the hearing. An order for provisional measures was granted by ITLOS on 22 November 2013.

By *Note Verbale* to the PCA dated 27 February 2014, the Russian Federation has indicated its “refusal to take part in this arbitration.” Following its First Meeting, the arbitral tribunal issued its first two procedural orders, adopting Terms of Appointment, Rules of Procedure, and an initial timetable for the arbitration. The Netherlands is required to submit its Memorial on jurisdiction, admissibility and merits by no later than 31 August 2014. After consulting the Parties, the arbitral tribunal determined that the place of the arbitration is Vienna, Austria. The case is pending.

15. Malta v. São Tomé and Príncipe (The *Duzgit Integrity* Arbitration)

On 22 October 2013, the Republic of Malta (“Malta”) instituted arbitral proceedings against the Republic of São Tomé and Príncipe (“São Tomé and Príncipe”) under Article 287 and Annex VII of UNCLOS in respect of a dispute concerning the vessel *Duzgit Integrity*. The members of the arbitral tribunal are: Professor Alfred H.A. Soons (President), Judge James L. Kateka and Professor Tullio Treves. By agreement between the Parties, Article 3 of Annex VII to the Convention applies *mutatis mutandis* to the constitution of the three-member arbitral tribunal. The case is pending.

XIII. ANNEX 3. MEMBERS OF ARBITRATION TRIBUNALS CONSTITUTED UNDER ANNEX VII OF UNCLOS

No	Members of Tribunal	Title	Appointed by	Nationality	List of Arbitrators Under Annexes V and VII
I. AUSTRALIA AND NEW ZEALAND V. JAPAN (SOUTHERN BLUEFIN TUNA) - 1999					
1.	Sir Kenneth Keith KBE	Judge, ICJ	Australia and New Zealand (Applicants)	New Zealand	Not listed
2.	Amb. Chusei Yamada (deceased)	Former Member, ILC	Japan (Respondent)	Japan	Nominated by Japan
3.	Stephen M. Schwebel (President)	Former Judge, ICJ	All Parties Agreed	USA	Not listed
4.	Florentino Feliciano	Former Member, WTO Appellate Body/Former Justice, Supreme Court of the Philippines	All Parties Agreed	Philippines	Not listed
5.	Amb. Per Tresselt	Former Justice, EFTA Court	All Parties Agreed	Norway	Nominated by Norway
II. IRELAND V. UK (MOX PLANT) - 2002					
6.	James Crawford, SC	Former Member, ILC	Ireland (Applicant)	Australia	Not listed
7.	Sir Arthur Watts, KCMG QC (deceased November 16, 2007)	Arbitrator	UK (Respondent)	UK	Nominated by Sudan
8.	Thomas A. Mensah (President)	Former President, ITLOS	All Parties Agreed	Ghana	Nominated by Ghana – 30 May 2013

No	Members of Tribunal	Title	Appointed by	Nationality	List of Arbitrators Under Annexes V and VII
9.	Gerhard Hafner	Member, PCA	All Parties Agreed	Austria	Nominated by Austria – 9 January 2008
10.	L. Yves Fortier CC QC	Member, Queen’s Privy Council of Canada	All Parties Agreed	Canada	Not listed
11.	Lord Mustill, PC (replacing Arthur Watts)	Former Lord of Appeal in Ordinary	UK (Respondent)	UK	Not listed
III. MALAYSIA V. SINGAPORE (LAND RECLAMATION CASE) - 2003					
12.	Kamal Hossain	Former Foreign Minister, Bangladesh	Malaysia	Bangladesh	Not listed
13.	Bernard H. Oxman	Professor, University of Miami	Singapore	USA	Not listed
14.	M.C.W. Pinto (President)	Former, Secretary-General of the Iran-US Claims Tribunal	ITLOS President	Sri Lanka	Nominated by Sri Lanka – 17 September 2002
15.	Ivan Shearer	Member, PCA	ITLOS President	Australia	Nominated by Australia
16.	Sir Arthur Watts, KCMG QC (deceased)	Arbitrator	ITLOS President	UK	Nominated by Sudan

No	Members of Tribunal	Title	Appointed by	Nationality	List of Arbitrators Under Annexes V and VII
IV. GUYANA V. SURINAME - 2004					
17.	Thomas Franck (deceased)	Professor, NYU	Guyana (Applicant)	USA	Not listed
18.	Hans Smit (deceased)	Former adviser to the US Delegation to UNCITRAL	Suriname (Respondent)	USA	Not listed
19.	Dolliver Nelson (President)	Judge, ITLOS	All Parties Agreed	Grenada	Not listed
20.	Ivan Shearer	Member, PCA	All Parties Agreed	Australia	Nominated by Australia
21.	Kamal Hossain	Former Foreign Minister, Bangladesh	All Parties Agreed	Bangladesh	Not listed
V. BARBADOS V. TRINIDAD & TOBAGO - 2004					
22.	Vaughan Lowe	Professor, Oxford	Barbados (Applicant)	UK	Nominated by UK – 2 November 2010
23.	Ian Brownlie (deceased)	Former Member, ILC	Trinidad & Tobago (Respondent)	UK	Not listed
24.	Stephen Schwebel (President)	Former Judge, ICJ	All Parties Agreed	USA	Not listed
25.	Francisco Orrego Vicuña	Professor, University of Chile	All Parties Agreed	Chile	Not listed
26.	Sir Arthur Watts, KCMG QC (deceased)	Arbitrator	All Parties Agreed	UK	Nominated by Sudan

No	Members of Tribunal	Title	Appointed by	Nationality	List of Arbitrators Under Annexes V and VII
VI. BANGLADESH V. INDIA - 2010					
27.	Vaughan Lowe (resigned)	Professor, Oxford	Bangladesh (Applicant)	UK	Nominated by UK – 2 November 2010
28.	Thomas A. Mensah (replacing Vaughan Lowe)	Former President, ITLOS	Bangladesh (Applicant)	Ghana	Nominated by Ghana – 30 May 2013
29.	Pemmaraju Sreenivasa Rao	Former Member, ILC	India (Respondent)	India	Not listed
30.	Rüdiger Wolfrum (President)	Judge, ITLOS	ITLOS President	Germany	Nominated by Mongolia
31.	Tullio Treves (resigned)	Former Judge, ITLOS	ITLOS President	Italy	Nominated by Italy – 28 June 2011
32.	Jean-Pierre Cot (replacing Tullio Treves)	Judge, ITLOS	ITLOS President	France	Nominated by Mongolia – 22 February 2005
33.	Ivan Shearer	Member, PCA	ITLOS President	Australia	Nominated by Australia
VII. MAURITIUS V. UK - 2011					
34.	Rüdiger Wolfrum	Judge, ITLOS	Mauritius (Applicant)	Germany	Nominated by Mongolia
35.	Christopher Greenwood CMG QC	Judge, ICJ	UK (Respondent)	UK	Not listed
36.	Ivan Shearer (President)	Member, PCA	ITLOS President	Australia	Nominated by Australia

No	Members of Tribunal	Title	Appointed by	Nationality	List of Arbitrators Under Annexes V and VII
37.	Albert Hoffmann	Vice President, ITLOS	ITLOS President	South Africa	Nominated by South Africa – 25 April 2014
38.	James Kateka	Judge, ITLOS	ITLOS President	Tanzania	Nominated by Tanzania – 18 September 2013
VIII. ARGENTINA V. GHANA - 2013					
39.	Elsa Kelly	Judge, ITLOS	Argentina (Applicant)	Argentina	Not listed
40.	Thomas A Mensah	Former President, ITLOS	Ghana (Respondent)	Ghana	Nominated by Ghana – 30 May 2013
41.	Bruno Simma (President)	Former Judge, ICJ	ITLOS President	Germany	Not listed
42.	Awn Shawkat Al-Khasawneh	Former Vice President, ICJ	ITLOS President	Jordan	Not listed
43.	Bernard H. Oxman	Professor, University of Miami	ITLOS President	USA	Not listed
IX. PHILIPPINES V. CHINA - 2013					
44.	Rüdiger Wolfrum	Judge, ITLOS	Philippines (Applicant)	Germany	Nominated by Mongolia
45.	Stanislaw Pawlak	Judge, ITLOS	ITLOS President	Poland	Nominated by Poland

No	Members of Tribunal	Title	Appointed by	Nationality	List of Arbitrators Under Annexes V and VII
46.	M.C.W. Pinto (resigned)	Former, Secretary- General of the Iran-US Claims Tribunal	ITLOS President	Sri Lanka	Nominated by Sri Lanka – 17 September 2002
47.	Thomas A. Mensah (President) (replacing M.C.W. Pinto)	Former President, ITLOS	ITLOS President	Ghana	Nominated by Ghana – 30 May 2013
48.	Alfred H. A. Soons	Former Director, NILOS	ITLOS President	Netherlands	Nominated by the Netherlands
49.	Jean-Pierre Cot	Judge, ITLOS	ITLOS President	France	Nominated by Mongolia – 22 February 2005
X. THE KINGDOM OF DENMARK (FAROE ISLANDS) V. THE EUROPEAN UNION (THE ATLANTO-SCANDIAN HERRING) - 2013					
50.	Francisco Orrego Vicuña	Professor, University of Chile	Faroe Islands (Applicant)	Chile	Not listed
51.	Gerhard Hafner	Member, PCA	EU (Respondent)	Austria	Nominated by Austria – 9 January 2008
52.	Thomas A. Mensah (President)	Former President, ITLOS	All Parties Agreed	Ghana	Nominated by Ghana – 30 May 2013
53.	Rüdiger Wolfrum	Judge, ITLOS	All Parties Agreed	Germany	Nominated by Mongolia

No	Members of Tribunal	Title	Appointed by	Nationality	List of Arbitrators Under Annexes V and VII
54.	M.C.W. Pinto	Former, Secretary-General of the Iran-US Claims Tribunal	All Parties Agreed	Sri Lanka	Nominated by Sri Lanka – 17 September 2002
XI. THE NETHERLANDS V. RUSSIAN FEDERATION (THE ARCTIC SUNRISE) - 2014					
55.	Alfred H. A. Soons	Former Director, NILOS	Netherlands (Applicant)	Netherlands	Nominated by the Netherlands
56.	Alberto Székely	Special Adviser to the Secretary for International Waters Affairs, Mexico	ITLOS President	Mexico	Nominated by Mexico – 9 December 2002
57.	Thomas A. Mensah (President)	Former President, ITLOS	ITLOS President	Ghana	Nominated by Ghana – 30 May 2013
58.	Janusz Symonides	Professor, University of Warsaw	ITLOS President	Poland	Nominated by Poland – 14 May 2004
59.	Henry Burmester	Former Chief General Counsel in the Australian Government Solicitor	ITLOS President	Australia	Nominated by Australia
XII. MALTA V. SÃO TOMÉ AND PRÍNCIPE (THE DUZGIT INTEGRITY) - 2014					
60.	Tullio Treves	Former Judge, ITLOS	Malta (Applicant)	Italy	Nominated by Italy – 28 June 2011
61.	Alfred H. A. Soons (President)	Former Director, NILOS	ITLOS President	Netherlands	Nominated by the Netherlands

No	Members of Tribunal	Title	Appointed by	Nationality	List of Arbitrators Under Annexes V and VII
62.	James Kateka	Judge, ITLOS	ITLOS President	Tanzania	Nominated by Tanzania – 18 September 2013