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【論　説】

国際人権規約実施過程にみる時間的管轄

——個人通報審査手続きにおける自由権規約委員会による受理可能性判断に関する考察——

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はじめに

1976年に発効した国際人権規約は、今日の国際人権法の発展に大きな影響を与えてきた。この国際人権規約には、いくつかの国際的実施措置が用意されているが、その中でも重要な措置が、自由権規約第1選択議定書に定める個人通報審査手続きである。

この自由権規約の個人通報審査手続きの実施は、2001年に採択された、女子差別撤廃条

The Settlement of Disputes under the 1982 Law of the Sea Convention: How entangled can we get?

*Cesare P. R. ROMANO**

Only nuts make knots on boats (Salty dog adage)

I Introduction

One of the most striking recent features of international law is the enormous expansion and transformation of the international judiciary. In the last decade of the twentieth century, almost a dozen international judicial bodies have become active or have been extensively reformed.[1] This considerable and rapidly expanding array of fora

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1) On the question of the proliferation of international judicial bodies see, in general, the special issue of the NYU Journal of International Law and Politics, 1999, Vol. 31, N. 4, containing the findings of a symposium convened in New York in October 1998 by the NYU School of Law and the Project on International Courts and Tribunals entitled "The Proliferation of International Tribunals: Piecing Together the Puzzle". For an overview of the state of development of the international judicial system, see http://www.pict-pcti.org/publications/PICT.Synoptic.Chart.2.0.pdf. For some commentary on the rapid growth of the international judicial sector see, Buergenthal, T., "Proliferation of International Courts and Tribunals: is it Good or Bad?", 14 *Leiden Journal of International Law* 267-275 (2001); Charney, J., "Is International Law Threatened by Multiple International Tribunals?", *Recueil des cours*, Vol. 271, 1998, pp. 101-382; Hafner, G., "Should one Fear the Proliferation of Mechanisms for the Peaceful Settlement of Disputes?", in Caflisch, L., (ed.), *Règlement pacifique des différends entre Etats*, The Hague, Kluwer, 1998, pp. 25-41; Boyle, A.,↗

has created unprecedented opportunities for the settlement of disputes between not only states, but also international organizations, corporations, NGOs and individuals in all possible combinations. Disputes are now increasingly addressed before courts of law on a leveled playing field, in the light of universal legal standards. Before such disputes would have simply remained unsettled or left to diplomatic negotiations. At the same time, in a mounting number of cases, international judicial bodies can be activated unilaterally.

Yet, this tumultuous growth has been largely uncoordinated and ad hoc, with the result that there is a large potential for jurisdiction overlap, opening the door to a series of predicaments, largely hitherto unknown in the field of public international law, such as choice of forum (which, when done opportunistically, could be labeled as "forum-shopping"); parallel litigation (*litispendence*); and lack of finality (*res judicata*). Moreover, there is an increasing potential for inconsistency of judgments, and ensuing fragmentation of the law.[2]

These issues concern all fields of international law, from human rights, to criminal law, from investment and trade, to regional economic integration. However, in the case of the law of the sea they are magnified by two peculiar features of the 1982 United

↘"The Proliferation of International Jurisdictions and Its Implications for the Court", in Bowett, D., (ed.), *The International Court of Justice*: Process, Practice and Procedure, BIICL, London 1997, pp. 124-130; Thirlway, H., "The Proliferation of International Judicial Organs and the Formation of International Law", in Heere W., (ed.), *International Law and the Hague's 750th Anniversary*, The Hague, 1999, pp. 433-441; Trevès, T., *Le controversie internazionali: Nuove tendenze, nuovi tribunali*, Milano, Giuffre, 1999; Pinto, M. C. W., "Judicial Settlement of International Disputes: One Forum or Many?", in Anghie, A. (ed.), *Legal Visions of the 21st Century*, The Hague, 1998, pp. 465-475; Boisson de Chazournes, L. (ed.), *Implications of the Proliferation of International Adjudicatory Bodies for Dispute Resolution: Proceedings of a Forum Co-Sponsored by the American Society of International Law and the Graduate Institute of International Studies*, Geneva, Switzerland, May 13, 1995, Washington D. C., ASIL Bulletin No. 9., 54 pp.; Lauterpacht, E., *Aspects of the Administration of International Justice*, Cambridge, Grotius, 1991, at 9-22; Romano, C., "The Proliferation of International Judicial Bodies: The Pieces of the Puzzle", *NYU JILP*, 1999, Vol. 31, N. 4, pp. 709-752.

2) Shany, Y., *The Competing Jurisdictions of International Courts and Tribunals*, Oxford, OUP, 2003. Charney dismissed concerns about diverging rulings by international courts in his Hague lectures. Yet, his conclusions were reached by observing a phenomenon at its inception, before empirical evidence could become significant. That is why I prefer talking about "potential". Charney, J., "Is International Law Threatened by Multiple International Tribunals?", *Recueil des cours*, Vol. 271, 1998, 105-381.

Nations Convention on the Law of the Sea (hereafter "UNCLOS", or "the Convention"), which is the linchpin of the international law of sea legal regime.[3] First, UNCLOS' dispute settlement procedure is not only unusually labyrinthine but also acephalous, or perhaps, more correctly, multi-cephalous, like an hydra. Indeed, by design it does not have at its core a judicial body that can authoritatively interpret its provisions, but rather an array of bodies, ad hoc and permanent, with no hierarchical order. Second, unlike the case of most international regimes, the dispute settlement machinery of UNCLOS is not self-contained, but open and easily bypassed. These two features expose the law of the sea legal regime to a significant risk of fragmentation and unplanned alteration.[4]

II The law of the sea dispute settlement machinery

Before analyzing the peculiar pathologies affecting the law of the sea dispute settlement machinery, it is necessarily to briefly review the main features of the UNCLOS' dispute settlement procedure itself. Yet, this is not easily done as Part XV of

3) In this article, the expression "international legal regime" is used to indicate a set of rules (either customary or codified in "hard" and "soft" legal instruments) governing a given area of international relations. Almost invariably, "international legal regimes" are pegged to a "pivot agreement" (e.g. the UNCLOS or the Vienna Conventions on Consular and Diplomatic relations). Very often there is an international institution to govern and develop a given "international legal regime". Indeed, in the case of the "international legal regime" of diplomatic law, such an institution does not exist.

The expression "international regime", *tout court*, will not be used. This is usually employed with an institutional connotation, as it refers to regulations developed within international institutions (again, invariably treaty-based) to further the pivotal agreement's goals. It refers, in other words, to the study of a social organization which answers to some degree of central coordination, as compared to "international legal regimes", which are often developed through a coordinated and organized law-making effort. Instances of "international regimes", to cite but a few, are those created by the Antarctic Treaty, the Whaling Convention, the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES), the International Convention for the Prevention of Pollution from Ships (MARPOL), the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution, and, of course, the Vienna Convention on the Protection of the Ozone Layer. Outside the environmental field, probably the most widely-known instance of "international regime" is that constituted by the 1947 General Agreement on Tariffs and Trade (GATT), replaced in 1994 by the World Trade Organization (WTO).

4) In this regard, see also: Boyle, Alan E., "Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction," 46 *International and Comparative Law Quarterly* 37-54 (1997); Nordquist, Myron H., "Problems of Compulsory Jurisdiction and the Settlement of Disputes Relating to Straddling Fish Stocks", 14 *International Journal of Marine & Coastal Law* 1-25 (1999).

the UNCLOS probably contains one of the longest and most intricate dispute settlement clauses ever drafted. It is the result of lengthy negotiations, throughout the whole development of the Convention. It struck a delicate balance between states that favored a judicial and binding dispute settlement procedure, and those that preferred diplomatic and non-binding means.[5]

In a nutshell, it stipulates that states have a general duty to peacefully settle disputes concerning the application of the Convention.[6] To do so, they are free, at any time, to agree on any means they choose, ranging from negotiations to judicial settlement.[7] However, if settlement is not reached by means of the procedure chosen by the parties, and no other procedure has been explicitly excluded by the parties, then either party is entitled to trigger the compulsory dispute settlement procedure.[8] There are four possible fora for such settlement: the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea, an Arbitral Tribunal constituted in accordance with Annex VII of the Convention, and a special Arbitral Tribunal constituted in accordance with Annex VIII.[9] If the parties to a dispute have made an optional

5) On the drafting history of the dispute settlement mechanism of the Law of the Sea Convention, see: Adede, A. O., *The System for Settlement of Disputes under the United Nations Convention on the Law of the Sea*, Dordrecht, Nijhoff, 1987; idem, "Prolegomena to the Dispute Settlement Part of the Law of the Sea Convention," 10 *NYU Journal of International Law & Politics* 253-392 (1977); Nordquist, M. H., *United Nations Convention on the Law of the Sea, 1982: A Commentary*, Dordrecht, Nijhoff, 1985-, Vol. 5, pp. 3-146. See also: Bernhardt, J. P. A., "Compulsory Dispute Settlement in the Law of the Sea Negotiations: A Reassessment," 19 *Virginia Journal of International Law* 69-105 (1978); Caflisch, L., "Le règlement judiciaire et arbitral des différends dans le nouveau droit international de la mer," in: *Feistchrift far Rudolf Bindschddler*, Bern (1980), pp. 351-71; Carnegie, A. R., "The Law of the Sea Tribunal," 28 *International and Comparative Law Quarterly* 69 (1979); Gaertner, M. P., "The Dispute Settlement Provisions of the Convention on the Law of the Sea: Critique and Alternatives to the International Tribunal for the Law of the Sea," 19 *San Diego Law Review* 577-97 (1982); Jaenicke, G., "Dispute Settlement under the Convention on the Law of the Sea", 43 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 813-827 (1983).

6) UNCLOS, art. 279 and 283.

7) *Ibid.*, art. 280.

8) *Ibid.*, art. 281.

9) *Ibid.*, art. 287. 1. On the intricacies of the choice of forum, see: Quéneudec, J-P., "Le choix des procédures de règlement des différends selon la Convention de Nations Unies sur le droit de la mer", Le droit international au service de la paix, de la justice et du développement: Mélanges Michel Virally, Paris, Pedone, 1991, pp. 381-87; Treves, T., "Conflicts between the International Tribunal for the Law of the Sea and the International Court of Justice," 31 *NYU Journal of International Law and Politics*, 809-822 (1999); Yankov, Alexander, "The International Tribunal for↗

declaration specifying a particular choice of forum, and their choices coincide, that body will automatically be chosen as the forum for the settlement of the dispute.[10] If their choices do not coincide, the forum for settlement will be by default an Arbitral Tribunal constituted under Annex VII.[11]

The possibility of triggering compulsory third-party settlement is the fundamental feature of the procedure, and it was the prize of those States arguing in favor of a dispute settlement procedure with teeth. However, the UNCLOS contains also a large series of exceptions to this. Namely, when signing, ratifying or acceding to the UNCLOS, or anytime thereafter, states have the possibility of opting out disputes on sea boundary delimitations, historic bays or titles, military and law enforcement activities, and issues relating to the maintenance of peace and security that are being dealt with by the UN Security Council.[12] Moreover, Article 297 excludes from compulsory dispute settlement procedures certain disputes arising out of the exploration and exploitation of the sea-bed, and disputes concerning coastal states' sovereign rights with respect to the living resources in their own EEZ.

Significant as they are, these exceptions are not as consequential as the one contained in Article 282:

> *"If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree".*

a) Multiplicity of fora within the UNCLOS

Certainly, when the UNCLOS was negotiated in the 1970s there were good and sound reasons to draft the dispute settlement clause that way. In case of disputes, no state wished to be bound to any particular adjudicative body. Those were the years of

the Law of the Sea: Its Place within the Dispute Settlement System of the UN Law of the Sea Convention," 37 *Indian Journal of International Law* 356 (1997).

10) *Ibid.*, art. 287. 4.

11) *Ibid.*, art. 287. 5.

12) UNCLOS, art. 298.

the Cold War. Moreover, the opprobrium of South West Africa case was still very much present in the mind of too many states, and in particular developing countries, and the International Court of Justice (ICJ) was shunned.[13] Few states favored the idea of giving a permanent international judicial body any role whatsoever in international governance, least of all in the new and still morphing law of the sea legal regime.

Yet, while the negotiators of the UNCLOS created the linchpin of an extraordinarily complex international legal regime, they failed to create an equally elaborated and comprehensive institutional structure to manage it. Only a few issues, like the exploration and exploitation of the international sea bed, were given governance structures, such as the International Seabed Authority, or the Commission on the Limits of the Continental Shelf. All other issues (e.g., freedom of navigation, policing, marine pollution, fisheries management, boundary delimitation, underwater cultural heritage) were left to States to manage ad hoc. This was to be done either by way of unilateral acts, or bilateral and multilateral agreements, or regional organizations, but, of course, always consistently with the provisions of the Convention.

Admittedly, not all international legal regimes are structured and endowed with governance organs.[14] However, the more complex and those involving a relevant number of states—the law of the sea meets both tests—do have *one* judicial body at its center. For instance, the ultimate custodian of the legal interpretation of the UN Charter is the International Court of Justice. The WTO is endowed with a quasi-judicial mechanism (the Dispute Settlement Body and the Appellate Body) to settle disputes over the interpretation of the various WTO agreements. Most regional economic integration organizations have at their very core a judicial body to preserve the organization's legal order and ensure its consistent interpretation.[15] The major regional human rights legal

13) *South West Africa cases* (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment of 21 December 1962, ICJ Reports 1962, pp. 345-346; *South West Africa*, Second Phase, Judgment, ICJ Reports 1966, p. 6. On the impact of the case, see Ajibola, P. B. A., "Africa and the International Court of Justice", in *Liber Amicorum Ruda*, pp. 353-366. For a recent reassessment of the 1966 judgment, in connection with another thorny case of decolonization, see Dugard, J., "1966 and All That: The South West Africa Judgment Revised in the East Timor Case", *African Journal of International and Comparative Law*, Vol. 8, 1996, pp. 549-563.

14) See supra note 3.

15) e.g. European Community → European Court of Justice; European Free Trade Area → EFTA Court; Andean Community → Court of Justice of the Cartagena Agreement; Central American

regimes have the same.[16] This is necessarily so because international adjudicative bodies—in particular those endogenous to a given international legal regime—not only settle disputes, but also interpret, clarify and possibly even evolve the legal regime's law. The judicial's body task is to preserve the legal system against unintended, or unilateral and deliberate, warping. Due to potential of conflicting judgments, these key functions cannot be parceled out to a clutter of adjudicative bodies.[17]

This is not the case of the UNCLOS. The ITLOS is only one of four possible means available for parties to settle disputes. In a way, it is as if the power to interpret the UN Charter had been given not only to the ICJ, but also to another permanent judicial body foreign to the Charter, and two ad hoc arbitral panels, and it had been left to the parties which one to choose. Under the UNCLOS, the ITLOS is not even the default mechanism. If the UNCLOS is to play the paramount role in the maintenance of world peace and sustainable development of marine resources that its negotiators had in mind, it needs to be interpreted consistently, and the ITLOS is the natural candidate for that role.[18] Yet, evidently, preserving the integrity of the Law of the Sea Convention's structure against erosion by ad hoc judgments made by ad hoc tribunals was hardly a concern of the negotiators of the Convention.

The issue arose recently in the so-called *Southern Bluefin Tuna* case.[19] While here

↘Integration System → Central American Court of Justice; Common Market for Eastern and Southern Africa → COMESA Court of Justice. Then again, some do not have the same judicial guarantees built-in (e.g. The North American Free-Trade Agreement; the MERCOSUR).

16) e.g. European Charter of Human Rights → European Court of Human Rights; American Convention on Human Rights → Inter-American Court of Human Rights; African Convention of Peoples' and Human Rights → African Court of Peoples' Human Rights (not yet in force)

17) This does not exclude that the judicial body can have an endogenous (ie part of the same regime) level of appeal.

18) On the issue, see in general Vukas, B., "Possible Role of the International Tribunal for the Law of the Sea in Interpretation and Progressive Development of the Law of the Sea", in Vidas, D./Østreng, W. (eds.), *Order for the Oceans at the Turn of the Century*, Kluwer, The Hague, 1999, pp. 95-104.

19) *Southern Bluefin Tuna* cases, (New Zealand v. Japan; Australia v. Japan), (Provisional Measures), Order of August 27, 1999 (hereafter: Order). Text reproduced in *ILM*, Vol. 38, 1999, pp. 1624-1655. *Southern Bluefin Tuna Case—Australia and New Zealand v. Japan*, Arbitral Award of August 4, 2000 (hereafter: Award). <http://www.worldbank.org/icsid/bluefintuna/main.htm> (Site last visited January 1, 2004). See, in general, Kwiatkowska, B., "The Southern Bluefin Tuna Cases", *International Journal of Marine & Coastal Law*, Vol. 15, 2000, pp. 1-36; *idem*, "Southern Bluefin↗

it is not the place to recall details, suffice it to say the case relates to a dispute between Australia, New Zealand and Japan that arose within the 1993 Convention for the Conservation of Southern Bluefin Tuna (hereafter the "1993 Convention").[20] As all regional fisheries agreement, the 1993 Convention laid down a simple scheme. A scientific body assesses the state of the species' stock, then a decision-making body (usually called "commission"), where each of the states party to the convention have one vote, decides how to share out the stock among members. In this case, Japan was convinced that the catch could be increased safely, while New Zealand and Australia were not. When Japan set out to carry out unilaterally what it called an "experimental fishing program", Australia and New Zealand cried foul.

The key point is that the 1993 Convention contains a dispute settlement clause (Article 16), which, in essence, provides that disputes that cannot be settled by diplomatic means can be submitted, with the consent of all parties to the dispute, to the ICJ or arbitration.[21] The consensual nature of this clause cannot be stressed enough.

The parties to the dispute (Australia and New Zealand as applicants, and Japan as

↘Tuna Case", *AJIL*, Vol. 94, 2000, pp. 150-154; Churchill, R. R., "The Southern Bluefin Tuna Cases: Order for Provisional Measures of 27 August 1999", *International & Comparative Law Quarterly*, Vol. 49, 2000, pp. 979-990; Rosenne, S., "International Tribunal for the Law of the Sea: Survey for 1999", *International Journal of Maritime and Coastal Law*, Vol. 15, pp. 443-474, at 464-474; Hayashi, M., "The Southern Bluefin Tuna Cases: Prescription of Provisional Measures by the International Tribunal for the Law of the Sea", *Tulane Environmental Law Journal*, Vol. 13, 2000, at 361-385; Romano, C., *The Peaceful Settlement of International Environmental Disputes: A Pragmatic Approach*, London, Kluwer, 2000, at 196-217 and 397-398; idem, "The Southern Bluefin Tuna Dispute: Hints of a World to Come...Like it or Not", *Ocean Development and International Law*, Vol. 32, 2001, pp. 377-412.

20) Convention for the Conservation of Southern Bluefin Tuna, May 10, 1993, *UNTS* 1819 p. 359.

21) *"1. If any dispute arises between two or more of the Parties concerning the interpretation or implementation of this Convention, those Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.*

2. Any dispute of this character not so resolved shall, with the consent in each case of all parties to the dispute, be referred for settlement to the International Court of Justice or to arbitration; but failure to reach agreement on reference to the International Court of Justice or to arbitration shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 above.

3. In cases where the dispute is referred to arbitration, the Arbitral Tribunal shall be constituted as provided in the Annex to this Convention. The Annex forms an integral part of this Convention."

respondent) appeared before two different adjudicative bodies in two different phases of the litigation. First, Australia and New Zealand requested that the ITLOS order provisional measures[22]; then the dispute was considered on its merits by an ad hoc arbitral tribunal (hereafter the "Arbitral Tribunal"), constituted under Annex VII of UNCLOS (i.e. the forum of default).

The crucial point of the dispute—or rather the hurdle over which the whole case stalled—was the question of the relationship between the UNCLOS dispute settlement procedure and that of this specific regional agreement, and whether the dispute settlement procedure of the latter overrides the one of the former. On this key question, which affects the integrity of the Convention's dispute settlement machinery and potentially that of the law of the sea legal regime, the ITLOS and the Arbitral Tribunal diverged.

It should be kept in mind that the ITLOS was seized merely with a request of interim measures. While, when seized in such a manner, a tribunal must satisfy itself of the existence of its jurisdiction, it does so only prima facie. This test is substantially lower than that applied during the consideration of the merits.

Be that as it may, the ITLOS interpreted the UNCLOS and the 1993 Convention as a Russian matrioshka, where the former includes the latter; the exegesis of the latter cannot be done but within the framework of the former. Moreover, the Tribunal found that the linkage between the UNCLOS and the sectorial regime (ie the one created by the 1993 Convention) could not be limited to its normative content, but also necessarily extends to its procedural aspects. Thus, the fact that the 1993 Convention applied to the parties did not preclude them from recourse to the dispute settlement procedures of UNCLOS.[23] Only in the event that Australia, New Zealand and Japan could agree to submit the dispute to arbitration under Article 16 of the 1993 Convention, would the

22) Article 290 of UNCLOS stipulates that: "[I]f a dispute has been duly submitted to a court or tribunal..., th[at] court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision." Moreover, under paragraph 5 of the same article, "[p]ending the constitution of an Arbitral Tribunal to which a dispute is being submitted..., any court or tribunal agreed upon by the parties or, failing such agreement, the International Tribunal for the Law of the Sea..., may prescribe...provisional measures".

23) Order, para. 55.

UNCLOS dispute settlement procedure be overridden. Because they could not come to such agreement, the Tribunal concluded that Australia and New Zealand were not precluded from unilaterally resorting to the Arbitral Tribunal under the UNCLOS.[24]

Conversely, when seized on the merits of the dispute, the Arbitral Tribunal reasoned differently.[25] While the ITLOS could not find in Article 16 an agreement to exclude compulsory dispute settlement procedures, the Arbitral Tribunal held that "...the absence of an express exclusion of any procedure... [wa]s not decisive."[26] The fact that Article 16 makes referrals to binding settlements conditional upon agreement between the parties, indicates that it was the intent of the parties to the 1993 Convention to remove proceedings from the reach of compulsory procedures of any kind, compulsory procedures of the UNCLOS included. For that reason, the Arbitral Tribunal held that Article 16 of the 1993 Convention excluded further procedures, and consequently, jurisdiction had to be declined.[27]

To understand the importance of this matter, it is necessary to read further in the award. According to the Arbitral Tribunal "...UNCLOS falls significantly short of establishing a truly comprehensive machinery of compulsory jurisdiction entailing binding decisions"[28] due to the exceptions, and because it allows parties to confine the applicability of compulsory procedures to cases where all parties to the dispute have agreed to submit their dispute to compulsory procedures. As the Arbitral Tribunal pointed out, a large number of international agreements regarding maritime issues, before and after the conclusion of the UNCLOS, exclude unilateral reference to compulsory adjudicative or arbitral procedures of a dispute.

The impact of this ruling is potentially far reaching. If followed it would mean that parties to a regional and sectorial agreement can shield themselves from unilateral resort to judicial settlement by including in the agreement a clause providing for resort to adjudication by common agreement. In other words, the UNCLOS dispute settlement procedure would lose much of the automaticity and bite that the original drafters gave it

24) Order, para. 54.

25) The President of the Tribunal was Stephen M. Schwebel (USA); its other members were Florentino Feliciano (Phil), Sir Kenneth Keith (NZ), Per Tresselt (Nor) and Chusei Yamada (Jap).

26) *Ibid.*

27) *Ibid.*, para. 59.

28) *Ibid.*, para. 62.

(at least on some matters, including high-sea biological resources management).

This is a momentous interpretation of the UNCLOS dispute settlement machinery. True, it is contained in an arbitral award which formally is only binding for the parties, and there is not such a thing as a *stare decisis* doctrine in international law, but one has to be genuinely slow-witted or naïve to slight the influence that rulings of international adjudicative bodies can have on each other's jurisprudence and international law.

Yet, if the UNCLOS is considered more than just another treaty, and is equated to a sort of "law of the sea" constitution, a universal law-making regime, as it was the ambition of its negotiators, then it is reasonable to wonder who should have the ultimate power to interpret it when the letter is unclear. Is this task better entrusted to an ad hoc arbitral panel, whose five members have been selected only by the parties to the given dispute, and whose horizon does not extend beyond that of the given case, or rather to a permanent judicial body, composed of a large number of judges elected by all parties to the UNCLOS? Ultimately, it is a matter of legitimacy and fairness.[29]

A passage of the award betrays that even that even the Arbitral Tribunal felt the need to ensure a degree of integrity to the UNCLOS dispute settlement machinery. "... [T]here might be instances in which the conduct of a state Party to UNCLOS and to a fisheries treaty implementing it would be so egregious, and risk consequence of such gravity, that a Tribunal might find that the obligations of the UNCLOS provide basis for jurisdiction, having particular regard to the provisions of article 300 [i.e. good faith and

29) Fairness is not so much material for abstract cogitations by softheaded moral thinkers, but a very practical matter. As Tom Franck proved, if rules or international institutions are not fair, they will hardly be complied with. Given the absence of a superior authority endowed with coercive powers, only the belief in their ultimate fairness can ensure compliance. Franck, T., *Fairness in International Law and Institutions*, Oxford, Oxford University Press, 1998. Franck elaborated four tests to determine the fairness of international law and institutions. Determinacy, Symbolic Validation, Coherence and Adherence. Determinacy is "the ability of a text to convey a clear message, to appear transparent in the sense that one can see through the language of a law to its essential meaning." *Ibid.*, p. 30. Symbolic validation expresses that the rule being enacted or the person enacting has the authority to do so. Specifically, symbolic validation refers to when the quality of a rule or the issuer of a rule "has attributes, often in the form of cues, which signal its significant part in the overall system of social order." *Ibid.*, p. 34. "A rule is coherent when its application treats like cases alike and when the rule relates in a principled fashion to other rules of the same system..." *Ibid.*, p. 38. Finally, adherence basically holds that laws need to be allowed for by way of primary laws in order to be legitimate. *Ibid.*, p. 41.

abuse of rights]".[30] In other words, having undermined the UNCLOS dispute settlement regime, the Arbitral Tribunal felt the need to warn future rogue States that they may not be able to rely on exceptions contained in dispute settlement clauses of regional and sectorial agreements after all. Yet, similar admonitions make sense only if made by a permanent judicial body, where judges sit for long periods of time and rely, with varying degrees of consistency, on past judgments.

In sum, ad hoc arbitral tribunals can make ad hoc justice, but while that might be functional to the pragmatic goal of ensuring the settlement of disputes, it is hardly beneficial to the preservation of the integrity of the international law of the sea regime.

b) Possibility of opting out the UNCLOS dispute settlement machinery

Regardless of whether one takes one approach to the UNCLOS dispute settlement procedure (i.e., parties can derogate to the Convention's compulsory procedure only if another dispute settlement procedure that entails a binding decision is activated) or the other (i.e. if the parties have agreed to a different dispute settlement procedure in a sectoral convention that entails a binding decision, this procedure overrides that of the UNCLOS, even if the parties cannot agree on its activation) the fact remains that the UNCLOS dispute settlement machinery is not self-contained. Whenever a dispute on the implementation of the Convention arises, States have a host of fora and procedure available.[31]

Besides the fact that States can, at any time, agree to settle a dispute on the UNCLOS outside the framework of the Convention's dispute settlement machinery (*post hoc*), *ante hoc* States can have agreed to a number of rather different, both in terms of applicable law, procedure and outcome, alternatives.

Regional and issue-specific conventions can, and often do, contain dispute settlement clauses. Let's take the example of fisheries management. The FAO website[32] lists 14

30) *Ibid.*, para. 64.

31) Eiriksson, Gudmundur, "The Role of the International Tribunal for the Law of the Sea in the Peaceful Settlement of Disputes," 37 *Indian Journal of International Law* 347 (1997); Mensah, Thomas A., "The Place of the International Tribunal for the Law of the Sea in the International System for the Peaceful Settlement of Disputes," 37 *Indian Journal of International Law* 466 (1997).

32) Http://www.fao.org/fi/body/rfb/index.htm (site last visited August 22, 2003).

regional fisheries bodies, like the one created by the 1993 Convention.[33] Three more are about to be activated, or their constitutive instruments are pending entry into force,[34] while one is under negotiation.[35] Of these seventeen existing or soon to exist, the constitutive instruments of eight of them, that it to say about half, contain dispute settlement clauses.[36] There is no reason to think that treaties regulating other aspects of world ocean management, such as marine pollution, or navigation safety, might have a substantially lower or higher incidence of dispute settlement clauses, but of course the issue should be studied before being able to reach definitive conclusions. Still, for any given dispute about the implementation of a sectoral convention dealing with issues related to the management of world oceans and the UNCLOS, it seems that there is a 50 percent chance that the UNCLOS binding (and often capable of being triggered unilaterally) dispute settlement machinery is bypassed. Again, as the *Southern Bluefin Tuna* case recently highlighted, it is not clear to what extent the dispute settlement procedures contained in these regional agreements are superseded by those of the UNCLOS (*ubi maior minor cessat*) or rather derogate to the Convention (*lex specialis*).

Yet, dispute settlement clauses contained in treaties are not the only way in which the UNCLOS dispute settlement machinery can be sidestepped. To begin with, States might also have filed declarations accepting the jurisdiction of other international judicial bodies, and the combination of these declarations might give those judicial bodies a basis

33) CCAMLR Commission 'of the Convention on the Conservation of Antarctic Marine Living Resources; CCSBT Commission for the Conservation of the Southern Bluefin Tuna; GFCM General Fisheries Commission For The Mediterranean; IATTC Inter-American Tropical Tuna Commission; IBSFC International Baltic Sea Fisheries Commission; ICCAT International Commission for the Conservation of Atlantic Tunas; IOTC Indian Ocean Tuna Commission; IPHC International Pacific Halibut Commission; IWC International Whaling Commission; NAFO North Atlantic Fisheries Organization; NASCO North Atlantic Salmon Conservation Organization; NEAFC North-East Atlantic Fisheries Commission; NPAFC North Pacific Anadromous Fish Commission; SEAFO South East Atlantic Fisheries Organisation.

34) CEPTFA Council of the Eastern Pacific Tuna Fishing Agreement; WCPFC Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean; PSC Pacific Salmon Commission.

35) SWIOFC Southwest Indian Ocean Fisheries Commission.

36) CCAMLR; CCSBT; IATTC; ICCAT; IOTC; SEAFO; WCPFC; PSC. For the record Japan is member of nine of them: 5 have their own dispute settlement procedures (CCAMLR; CCSBT; IATTC; ICCAT; IOTC), while 4 do not (IWC; NAFO; NPAFC; GFCM.)

to exercise jurisdiction. To illustrate, again using the *Southern Bluefin Tuna* case, besides the procedure under Article 16 of the 1993 Convention and the UNCLOS procedure, another option available was the submission of the dispute to the ICJ. This was a real possibility since Australia, New Zealand and Japan have rather open-ended optional declarations accepting jurisdiction under Article 36. 2 of the Court's Statute.[37] The applicants did not select that forum for a multitude of practical and legal reasons.[38] Granted, had the case been submitted to the ICJ on the basis of these optional declarations, the Court's jurisdiction probably would have been challenged by Japan. Yet, the possibility was there.

37) Australia recognized: "...as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice.... The Government of Australia further declares that this declaration does not apply to any dispute in regard to which the parties thereto have agreed or shall agree to have recourse to some other method of peaceful settlement.". Declaration of March 17, 1975, *ICJ Yearbook*, 1994-1995, at 80. See http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicdeclarations.htm#aust (Site last visited January 1, 2004). Note that on March 22, 2002 Australia amended its optional declaration of acceptance of the jurisdiction of the ICJ and ITLOS to exclude maritime disputes. Triggs, G. & Dean B., "Australia Withdraws Maritime Disputes from the Compulsory Jurisdiction of the International Court of Justice and the International Tribunal for the Law of the Sea," 17 (3) *International Journal of Marine and Coastal Law* 423-30 (September 2002).

New Zealand accepted: "...as compulsory, ipso facto, and without special agreement, on condition of reciprocity, the jurisdiction of the International Court of Justice...over all disputes other than...disputes in regard to which the parties have agreed or shall agree to have recourse to some other method of peaceful settlement; ...disputes arising out of, or concerning, the jurisdiction or rights claimed or exercised by New Zealand in respect of the exploration, exploitation, conservation or management of the living resources in marine areas beyond and adjacent to the territorial sea of New Zealand but within 200 nautical miles from the baselines from which the breadth of the territorial sea is measured." Declaration of September 22, 1977, para. 2, 2. 2 and 2. 3, Ibid., at 104. See http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicdeclarations.htm #nzel (Site last visited January 1, 2004).

Japan recognized: "...as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation and on condition of reciprocity, the jurisdiction of the International Court of Justice, over all disputes...with regard to situations or facts...which are not settled by other means of peaceful settlement. This declaration does not apply to disputes which the parties thereto have agreed or shall agree to refer for final and binding decision to arbitration or judicial settlement." Declaration of September 15, 1958, Ibid., at 95. See http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicdeclarations.htm#japo (Site last visited January 1, 2004).

38) For some of the reasons, see Romano, "The Southern Bluefin Tuna Dispute: Hints of a World to Come...Like it or Not", *op. cit.*, at 318-320.

Secondly, States can be—and very often are—at the same time party to UNCLOS and another legal regime that has built in its own dispute settlement procedures and a judicial body. For instance, two or more states involved in a dispute under the UNCLOS might also be members of the World Trade Organization, or the European Communities. Proceedings filed before the dispute settlement bodies of these organizations would put in question the jurisdiction of any adjudicative body seized under UNCLOS.

This is exactly what recently happened in the so-called *MOX Plant* dispute.[39] The case concerns a dispute between Ireland and the United Kingdom over potential discharges into the Irish Sea of certain radioactive wastes produced by, or as a result of, the operation of a mixed oxide ("MOX") fuel plant at Sellafield in the United Kingdom, and related movements of radioactive material through the Irish Sea. In 1992, Ireland instituted proceedings against the UK under UNCLOS, by asking the establishment of an Annex VII default arbitral tribunal.[40] The ITLOS was requested to order interim measures pending the constitution of the Tribunal, which it did.[41] Yet, since both parties are part of the legal order of the European Communities, in June 2003, the Arbitral Tribunal suspended proceedings out of concerns about its jurisdiction. Indeed, the matter was under consideration before the European Parliament, and the European Commission is examining the question of whether to institute proceedings under Article 226 of the European Communities Treaty.[42] Because of this, the Tribunal concluded that "... there remain substantial doubts whether the jurisdiction of the Tribunal can be firmly established in respect of all or any of the claims in the dispute". The order of suspension was reiterated in November 2003, "... until the European Court of Justice has given judgment or the Tribunal otherwise determines".[43]

39) On the MOX plant case, see Hallum, V., "International Tribunal for the Law of the Sea: the Mox Nuclear Plant Case," 11 (3) *Review of European Community and International Environmental Law* 372-5 (2002).

40) Http://www.pca-cpa.org/ENGLISH/RPC/Request%20for%20Provisional%20Measures.pdf. The arbitration is facilitated by the Permanent Court of Arbitration. The President of the Tribunal is Judge Thomas Mensah (Ghana), of the ITLOS; its other members are James Crawford (Australia); Yves Fortier (Canada); Gerhard Hafner (Austria); Arthur Watts (UK).

41) The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures (Case no. 10), Http://www.itlos.org/ (site last visited January 1, 2004).

42) Ireland v. United Kingdom ("MOX Plant Case"), Order No. 3, June 25, 2003. Http://www.pca-cpa.org/ENGLISH/RPC/ (site last visited January 1, 2004).

43) Ireland v. United Kingdom ("MOX Plant Case"), Order No. 4, November 14, 2003. http://www.pca-cpa.org/ENGLISH/RPC/MOX%20Order%20No4.pdf (site last visited January 1, 2004).

Another case could have potentially encountered the same problems. During the Fall of 2000, a dispute over the fishing of swordfish in the South-East Pacific between Chile and the European Community was referred to two different judicial bodies.[44] While the European Community requested and obtained the establishment of a WTO dispute settlement panel to determine whether Chile had violated, inter alia, GATT's Article V and XI,[45] Chile activated the UNCLOS dispute settlement procedure alleging a violation of the UNCLOS' norms relating to the protection of the marine environment. In a first stage the dispute was to be brought before a default Annex VII Arbitral Tribunal, but eventually the parties agreed to submit it to a special chamber of the ITLOS.[46]

As in the *MOX Plant* case, at the time of this writing, proceedings are suspended. In the spring of 2001, the EC and Chile reached an agreement to resolve the dispute, covering both access for EC fishing vessels to Chilean ports and bilateral and multilateral scientific and technical cooperation on conservation of swordfish stocks. As a result, pending the ratification of the agreement, the EC requested a suspension of panel proceedings in the WTO, and Chile and the EC asked the ITLOS to suspend proceedings. The critical question of whether the ITLOS has the jurisdiction to hear the dispute, or whether it is prevented from doing so because of Article 282 UNCLOS remains of interest.

Indeed, it is a legitimate question to ask whether the issue of access to Chilean ports and services pending before the WTO and that of the preservation of the swordfish stock are the same. If they are, the ITLOS might have to defer to the dispute settlement procedures of the WTO, in compliance with the exception of Article 282 of the UNCLOS, but, if not, then the possibility of parallel proceedings before the two fora over the same situation is real. It is not far-fetched to imagine that, by resorting to two

44) On the case, see: Shamsey, J., "ITLOS vs. Goliath: The International Tribunal for the Law of the Sea Stands Tall with the Appellate Body in the Chilean-EU Swordfish Dispute," 12 (2) *Transnational Law & Contemporary Problems* 513-40 (Fall 2002); Zekos, G., I., "Arbitration as a Dispute Settlement Mechanism Under UNCLOS, the Hamburg Rules, and WTO," 19 (5) *Journal of International Arbitration* 497-504 (October 2002).

45) Chile—Measures Affecting the Transit and Importation of Swordfish, complaint by the European Communities (WT/DS193/1) (site last visited August 22, 2003).

46) ITLOS/Press 43, December 21, 2000. Http://www.itlos.org/. (site last visited August 22, 2003).

different bodies of law, the two organs could eventually come to antithetical conclusions, with the WTO panel upholding EC claims and the ITLOS upholding those of Chile—an awkward situation indeed, where the only real loser would be the unity of international law.

As a matter of fact, "cluster litigation" is on the rise. An increasing number of disputes is parceled into "caselets", each approaching the same problem from a different angle and invoking a different body of law, which are then brought before a number of fora and litigated simultaneously.[47] Just to remain within the law of the sea field, for instance, a spin off of the MOX Plant case was brought by Ireland before an arbitral tribunal constituted under the OSPAR Convention (a regional convention for the protection of the marine environment of the North East Atlantic),[48] claiming that the United Kingdom had breached its obligations under that convention by refusing to disclose information contained in two reports prepared as part of the approval process for the plant. Eventually, the Arbitral Tribunal found on the merits that Ireland's claim for information did not fall within Article 9 (2) of the OSPAR Convention,[49] but this is unlikely the end of it. In theory, nothing bars Irish nationals to bring suits against the UK before the European Court of Human Rights, nor, as it was said, the EC Commission to initiate other procedures.

Ⅲ Conclusions

To conclude, the current multiplication of international adjudicative fora and the greater willingness to resort to them are, all considered, positive phenomena. As Thomas Buergenthal, former president of the Inter-American Court of Human Rights and currently judge at the ICJ, remarked, this phenomenon contributes to "... socialize states ... to the idea of international adjudication, that is, [it] tend[s] to make States less reluctant of and more agreeable to the idea of settling their disputes by adjudication or arbitration. Put another way, the proliferation of international tribunals is both the consequence of and a major factor contributing to the acceptance by States of international adjudication, as a viable and effective option for the resolution of disputes between them".[50] If states want to address disputes by way of third-party law-based binding settlement, nowadays they have the amplest choice ever, and if they cannot find anything suitable they can custom make it. Diversity makes it possible to minimize the impact that procedural and legal bottlenecks (such as rules on standing or applicable law) might have on the utilization of fora.

Yet, this unprecedented freedom is not entirely unproblematic, as it has taken place in the absence of mandatory mechanisms of coordination between the various fora and it has been accompanied by a greater possibility and readiness to trigger adjudication unilaterally. Nowadays, a dogged plaintiff has an expanding array of avenues to pursue a case. Some might succeed, others might fail on the jurisdictional phase, but the legal barrage is guaranteed to harass the opposing party. Whether this is done for the sake of peace, justice and international law, or rather for a gullible public opinion, or, worst, to keep courts busy and attorneys well fed, is unclear.

The UNCLOS dispute settlement machinery is affected by all these problems and then some. Because of its own intricate structure that ultimately relies on arbitral panels rather than the ITLOS, and the fact that it is not self-contained, but plugged to, and can be circumvented by, other dispute settlement procedures, the law of the sea legal regime is exposed to a significant risk of fragmentation and contradictory interpretation. Anyone who has the solidity and credibility of the law of the sea at heart should be concerned about this.

47) On this issue, see Romano, C., "The Americanization of International Litigation", 19 *Ohio State Journal on Dispute Resolution* 89, at 95-103 (2004).

48) 1992 OSPAR Convention for the Protection of the Marine Environment of the North East Atlantic, 32 *International Legal Materials* (1993) 1068. Art. 32 provides for ad hoc arbitration in case of disputes.

49) Ireland v. United Kingdom ("OSPAR" Arbitration), Award, July 2, 2003. Http://www.pca-cpa.org/ENGLISH/RPC/ (site last visited August 22, 2003). The arbitration was facilitated by the Permanent Court of Arbitration. The Chair of the Tribunal was Michael Reisman (US); its other members were Gavan Griffith, (Australia); and Lord Mustill (UK).

50) Buergenthal, *op. cit.*, at 271-272.

Name of managing commission	Name of Convention and Protocols	Number of States Party	Is Japan a member?	Dispute Settlement Procedure?
CCAMLR Commission of the Convention on the Conservation of Antarctic Marine Living Resources	1980 Convention on the Conservation of Antarctic Marine Living Resources, (Canberra)	31 including EC	Yes	Article XXV 1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of this Convention, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice. 2. Any dispute of this character not so resolved shall, with the consent in each case of all Parties to the dispute, be referred for settlement to the International Court of Justice or to arbitration; but failure to reach agreement on reference to the International Court or to arbitration shall not absolve Parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 above. 3. In cases where the dispute is referred to arbitration, the arbitral tribunal shall be constituted as provided in the Annex to this Convention.
CEPTFA Council of the Eastern Pacific Tuna Fishing Agree-ment	1983 Eastern Pacific Ocean Tuna Fishing Agreement and its Protocol (San José, Costa Rica) NOT YET INTO FORCE	3 (signed by United States of America, Costa Rica and Panama)	No	No
CCSBT Commission for the Conservation of the Southern Bluefin Tuna	1994 Convention for the Conservation of Southern Bluefin Tuna	5 (including Taiwan)	Yes	Article 16 "1. If any dispute arises between two or more of the Parties concerning the interpretation or implementation of this Convention, those Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice. 2. Any dispute of this character not so resolved shall, with the consent in each case of all parties to the dispute, be referred for settlement to the International Court of Justice or to arbitration; but failure to reach agreement on reference to the International Court of Justice or to arbitration shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 above. 3. In cases where the dispute is referred to arbitration, the Arbitral Tribunal shall be constituted as provided in the Annex to this Convention. The Annex forms an integral part of this Convention."
GFCM General Fisheries Commission For The Mediterranean	1963 Agreement For The Establishment Of A General Fisheries Council For The Mediterranean	24 (including EC)	Yes	No

IATTC Inter-American Tropical Tuna Commission	1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission+1999 Protocol+2003 Antigua convention for the strengthening of the Inter-American Tropical Tuna Commission	13	Yes	Art. XXV (Antigua Convention) 1. The members of the Commission shall cooperate in order to prevent disputes. Any member may consult with one or more members about any dispute related to the interpretation or application of the provisions of this Convention to reach a solution satisfactory to all as quickly as possible. 2. If a dispute is not settled through such consultation within a reasonable period, the members in question shall consult among themselves as soon as possible in order to settle the dispute through any peaceful means they may agree, in accordance with international law. 3. In cases when two or more members of the Commission agree that they have a dispute of a technical nature, and they are unable to resolve the dispute among themselves, they may refer the dispute, by mutual consent, to a non-binding *ad hoc* expert panel constituted within the framework of the Commission in accordance with the procedures adopted for this purpose by the Commission. The panel shall confer with the members concerned and shall endeavor to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.
IBSFC International Baltic Sea Fisheries Commission	1973 Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts (Gdansk)	6 (including EC)	No	No
ICCAT International Commission for the Conservation of Atlantic Tunas	1984 International Convention for the Conservation of Atlantic Tunas (Paris)	36 (including EC)	Yes	ARTICLE 26 Any conflict regarding application of this Agreement or of any other additional agreement which may be stipulated, if not resolved by negotiation between the parties, shall be submitted to a court of three arbiters for final settlement. One of these shall be designated by the Executive Secretary of the International Commission for the Conservation of Atlantic Tunas; one by the Ministry of Foreign Affairs of the Spanish Government, and the third by the first two arbiters or, should they fail to agree, by the President of the International Court of Justice.
IOTC Indian Ocean Tuna Commission	Agreement for the Establishment of the Indian Ocean Tuna Commission	19 (including EC)	Yes	Article XXIII. INTERPRETATION AND SETTLEMENT OF DISPUTES Any dispute regarding the interpretation or application of this Agreement, if not settled by the Commission, shall be referred for settlement to a conciliation procedure to be adopted by the Commission. The results of such conciliation procedure, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If as the result of this procedure the dispute is not settled, it may be referred to the International Court of Justice in accordance with the Statute of the International Court of Justice, unless

				the parties to the dispute agree to another method of settlement.
IPHC International Pacific Halibut Commission	1923 Treaty For The Protection Of The Pacific Halibut	2	No	No
IWC International Whaling Commission	1946 International Convention for the Regulation of Whaling (Washington DC) + 1956 Protocol	51	Yes	No
WCPFC Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean	2000 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Honolulu)	4 ratifications to date (not yet in force)	4 ratifications to date (not yet in force)	PART IX PEACEFUL SETTLEMENT OF DISPUTES *Article 31* *Procedures for the settlement of disputes* The provisions relating to the settlement of disputes set out in Part VIII of the Agreement apply, mutatis mutandis , to any dispute between members of the Commission, whether or not they are also Parties to the Agreement. ANNEX I. FISHING ENTITIES If a dispute concerning the interpretation or application of this Convention involving a fishing entity cannot be settled by agreement between the parties to the dispute, the dispute shall, at the request of either party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.
NAFO North Atlantic Fisheries Organization	1978 Convention on Future Multilateral cooperation in the Northwest Atlantic Fisheries (Ottawa)	17 including EC	Yes	No
NASCO North Atlantic Salmon Conservation Organization	Convention for the Conservation of Salmon in the North Atlantic Ocean	7 including EC	No	No
NEAFC North-East Atlantic Fisheries Commission	1980 Convention on Future Muntilateral Cooperation in North-East Atlantic Fisheries (London)	6 including EC	No	No
NPAFC North Pacific Anadromous Fish Commission	1992 Convention For The Conservation OfAnadromous Stocks In The North Pacific Ocean (Moscow)	5	Yes	No
PSC Pacific Salmon Commission	1985 Pacific Salmon Treaty	2	No	Article XII: TECHNICAL DISPUTE SETTLEMENT 1. Either Party may submit to the Chairman of the Commission, for referral to a Technical Dispute Settlement Board, any dispute concerning estimates of the extent of salmon interceptions and data related to questions of overfishing. The Commission may submit

				other technical matters to the Chairman for referral to a Board. The Board shall be established and shall function in accordance with the provisions of Annex III. The Board shall make findings of fact on the disputes and the other technical matters referred to it. 2. The findings of the Board shall be final and without appeal, except as provided in paragraph 3, and shall be accepted by the Commission as the best scientific information available. 3. Either Party may, by application in writing to the Chairman of the Commission, request reconsideration of a finding of a Board, provided that such request is based on information not previously considered by the Board and not previously known to or reasonable discoverable by the Party requesting such reconsideration. The Chairman shall, if possible, refer the request to the Board which made the finding. Otherwise, the Chairman shall refer the request to a new Board constituted in accordance with the provisions of Annex III. Annex III: TECHNICAL DISPUTE SETTLEMENT BOARD 1. Each Technical Dispute Settlement Board shall be composed of three members. Within 10 days of receiving a request under Article XII to refer a matter to a Board, the Chairman of the Commission shall notify the Parties. Within 20 days of this notification, each Party shall designate one member and the Parties shall jointly designate a third member, who shall be Chairman of the Board. 2. The Board shall determine its rules of procedure, but the Commission or the Parties may specify the date by which the Board shall report its findings. The Board shall provide an opportunity for each Party to present evidence and arguments, both in writing and, if requested by either Party, in oral hearing. The Board shall report its findings to the Commission, along with a statement of its reasons. 3. Decisions of a Board, including procedural rulings and findings of fact, shall be made by majority vote and shall be final and without appeal except as provided in Article XII, paragraph 3. 4. Remuneration of the members and their expense allowances shall be determined on such basis as the Parties may agree at the time the Board is constituted. The Commission shall provide facilities for the proceedings.
SEAFO South East Atlantic Fisheries Organisation	2001 Convention on the Conservation and Management of Fisheries Resources in the South East Atlantic Ocean (Windoek)	2 to date (not yet in force)		Article 24. DISPUTE SETTLEMENT The Contracting Parties shall cooperate in order to prevent disputes. If any dispute arises between two or more Contracting Parties concerning the interpretation or implementation of this Convention, those Contracting Parties shall consult among themselves with a view to resolving the dispute, or to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settle-

				ment or other peaceful means of their own choice. In cases where a dispute between two or more Contracting Parties is of a technical nature, and the Contracting Parties are unable to resolve the dispute among themselves, they may refer the dispute to an ad hoc expert panel established in accordance with procedures adopted by the Commission at its first meeting. The panel shall confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes. Where a dispute is not referred for settlement within a reasonable time of the consultations referred to in paragraph 2, or where a dispute is not resolved by recourse to other means referred to in this article within a reasonable time, such dispute shall, at the request of any party to the dispute, be submitted for binding decision in accordance with procedures for the settlement of disputes provided in Part XV of the 1982 Convention or, where the dispute concerns one or more straddling stocks, by provisions set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also Parties to these instruments. A court, tribunal or panel to which any dispute has been submitted under this article shall apply the relevant provisions of this Convention, of the 1982 Convention, of the 1995 Agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law, compatible with the 1982 Convention and the 1995 Agreement, with a view to ensuring the conservation of the fish stocks concerned.
SWIOFC Southwest Indian Ocean Fisheries Commission	The convention is under negotiation			