

**A GUIDE TO PROCEEDINGS BEFORE THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**



Issued by:

International Tribunal for the Law of the Sea
Am Internationalen Seegerichtshof 1
D-22609 Hamburg

Tel.: +49 (0)40 35607-0
Fax: +49 (0)40 35607-245
itlos@itlos.org

www.itlos.org
www.tidm.org

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FOREWORD

The International Tribunal for the Law of the Sea (ITLOS) is an international judicial body established by the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”) to adjudicate disputes concerning the interpretation or application of the Convention and all matters specifically provided for in any other agreement conferring jurisdiction on the Tribunal. Such agreements include the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.¹ The Convention governs all legal matters concerning the ocean space and its resources (fishing, pollution, maritime delimitation, navigation, status of ships, scientific research, and exploration and exploitation of natural resources). The Tribunal has its seat in Hamburg in the Federal Republic of Germany. Its Statute (“the Statute”) is contained in Annex VI to the Convention.

Owing to the interest generated by proceedings before the Tribunal, it appears useful to provide advocates, counsel and government legal advisers with practical information explaining the manner in which cases are instituted and conducted before the Tribunal. This is the purpose of the present guide which gives a brief presentation of the Tribunal and then sets out the principal features of contentious proceedings on the merits, incidental proceedings, prompt release applications, requests for the prescription of provisional measures and advisory proceedings. Examples of pleadings and model forms are annexed to the guide and are reproduced for guidance only.

This guide is issued by the Registry for information purposes.

For further information, contact:

The Registrar
International Tribunal for the Law of the Sea
Am Internationalen Seegerichtshof 1
22609 Hamburg
Germany
Tel.: +49 40 35607-0
Fax: +49 40 35607-245 and -275

itlos@itlos.org
www.itlos.org

This guide, including all annexes, is also available on the website of the Tribunal.

¹ A list of agreements conferring jurisdiction on the Tribunal is contained in Annex 1.

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CHAPTER 1

OVERVIEW OF PROCEEDINGS BEFORE THE TRIBUNAL

A. TRIBUNAL

Composition

The Tribunal is composed of 21 judges who are recognized experts in the field of the law of the sea. The judges are elected by the States Parties to the Convention for a term of nine years and may be re-elected. In the Tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution must be assured (Statute, article 2, paragraph 2). There must be no fewer than three members from each geographical group as established by the General Assembly of the United Nations (Statute, article 3).²

A party to a dispute may designate a person of its choice to sit as a judge *ad hoc* if the Tribunal does not include upon the bench a judge of the nationality of that party (Statute, article 17).

Chambers

The Seabed Disputes Chamber is composed of 11 judges and has exclusive jurisdiction under Part XI, section 5, of the Convention, over disputes concerning the exploration and exploitation of “the seabed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction” (the “Area”) (Statute, article 14). Disputes between States Parties to the Convention concerning the interpretation and application of Part XI may be submitted, at the request of any party to the dispute, to an *ad hoc* chamber, composed of three of the members of the Seabed Disputes Chamber in accordance with article 188, paragraph 1(b), of the Convention. The composition of the chamber is determined by the Seabed Disputes Chamber with the approval of the parties (Statute, article 36).

The Tribunal has also established four special chambers to which cases may be submitted at the request of the parties to a dispute:

- the Chamber of Summary Procedure, composed of five judges, was established to ensure that cases are dealt with promptly (Statute, article 15, paragraph 3);
- three chambers were established to deal with specific categories of cases (Statute, article 15, paragraph 1): the Chamber for Fisheries Disputes, the Chamber

² The geographical distribution as decided by the fifth Meeting of States Parties in 1996 is as follows: Five judges from the African Group; five judges from the Asian Group; four judges from the Latin American and Caribbean Group; four judges from the Western European and Other States Group; and three judges from the Eastern European Group (see SPLOS/L.3/Rev.1 of 31 July 1996). The current composition of the Tribunal is available on the Tribunal's website: www.itlos.org

for Marine Environment Disputes and the Chamber for Maritime Delimitation Disputes.

In addition, parties may request the Tribunal to constitute an *ad hoc* chamber for a particular dispute (Statute, article 15, paragraph 2). The composition of the chamber is determined with the approval of the parties, who may also choose judges *ad hoc* if the chamber does not include a judge of the nationality of either or both of the parties. Such an option therefore combines the advantages of a permanent court with those of an arbitral body, but avoids the considerable expense that is often incurred in participating in arbitral proceedings.³

B. COMPETENCE

Who has access to the Tribunal?

The Tribunal is open to States Parties to the Convention in accordance with article 20, paragraph 1, of the Statute. The expression “States Parties” includes States and the other entities referred to in article 305 of the Convention (international organizations and certain self-governing associated States and territories), which become parties to it (Convention, article 1, paragraph 2). A current list of States Parties to the Convention is available on the Tribunal's website: www.itlos.org.

The Tribunal is open to entities other than States Parties in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case (Statute, article 20, paragraph 2), including States Parties to other international agreements conferring jurisdiction on the Tribunal.

The Seabed Disputes Chamber is open to entities other than States Parties (for example, States, international organizations, and natural or legal persons) in any case expressly provided for in Part XI of the Convention (exploration and exploitation of the Area).

What is the scope of the jurisdiction of the Tribunal?

The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with the Convention. It also includes all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal (Statute, article 21). The Tribunal has jurisdiction to deal with disputes (contentious jurisdiction) and legal questions (advisory jurisdiction) submitted to it.

Contentious jurisdiction

³ This option was exercised by Chile and the European Community when, pursuant to a special agreement, those parties submitted the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean* to a special chamber of the Tribunal (see *Order of 20 December 2000, ITLOS Reports 2000*, p. 148).

The Tribunal has jurisdiction over all disputes concerning the interpretation or application of the Convention, subject to the provisions of article 297 and to the declarations made in accordance with article 298 of the Convention (the text of the declarations is available on the Tribunal's website: www.itlos.org).

Article 297 and declarations made under article 298 of the Convention do not prevent parties from agreeing to submit to the Tribunal a dispute otherwise excluded from the Tribunal's jurisdiction under these provisions (Convention, article 299).

The Tribunal also has jurisdiction over all disputes and all applications submitted to it pursuant to the provisions of any other agreement conferring jurisdiction on the Tribunal.⁴ A number of multilateral agreements conferring jurisdiction on the Tribunal have been concluded to date.⁵

How can a dispute be submitted to the Tribunal?

(a) On the basis of declarations made under article 287 of the Convention

According to article 287 of the Convention, a State, when signing, ratifying or acceding to the Convention or at any time thereafter, is free to accept the jurisdiction of the Tribunal for the settlement of disputes concerning the interpretation or application of the Convention by means of a written declaration to be deposited with the Secretary-General of the United Nations (the text of these declarations is available on the Tribunal's website: www.itlos.org). The Tribunal has compulsory jurisdiction to deal with all disputes concerning the interpretation or application of the Convention when the parties to the dispute have accepted the Tribunal as the same procedure for the settlement of the dispute by means of a declaration made under article 287 of the Convention. The dispute may be submitted to the Tribunal at the request of either party by way of unilateral application.

A model form for making a declaration in favour of the Tribunal is attached in annex 2.

(b) On the basis of a special agreement

The Tribunal may have jurisdiction over a dispute submitted on the basis of a special agreement concluded between the parties. The parties may also decide, by agreement, to transfer to the Tribunal a dispute that has been instituted before an arbitral tribunal established under article 287.⁶

⁴ See Statute, article 21. In addition, article 22 of the Statute provides that if all parties to a treaty or convention already in force and concerning the subject matter covered by the Convention so agree, any disputes concerning the interpretation or application of such treaty or convention may, in accordance with such agreement, be submitted to the Tribunal.

⁵Agreements conferring jurisdiction on the Tribunal are listed in Annex 1.

⁶ In *The M/V "SAIGA" Case (Saint Vincent and the Grenadines v. Guinea)*, Saint Vincent and the Grenadines had instituted arbitral proceedings against Guinea in accordance with Annex VII to the Convention in respect of a dispute relating to the *Saiga*. Saint Vincent and the Grenadines and Guinea subsequently notified the Tribunal of an agreement between them to transfer the arbitration proceedings to the Tribunal. See *"M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 14. Similarly, in the

A model form for a special agreement to submit a dispute to the Tribunal is attached in annex 3.

Parties that agree to submit a dispute to the Tribunal may also request that a special chamber be formed to deal with their particular dispute, in accordance with article 15, paragraph 2, of the Statute. The Tribunal has also constituted the following standing special chambers to which a dispute may be submitted at the request of the parties: the Chamber for Fisheries Disputes, the Chamber for Marine Environment Disputes, the Chamber for Maritime Delimitation Disputes and the Chamber of Summary Procedure.

(c) On the basis of jurisdictional clauses

The jurisdiction of the Tribunal may also be based on jurisdictional clauses inserted in international agreements conferring jurisdiction on the Tribunal or a special chamber of the Tribunal formed pursuant to article 15, paragraph 2, of the Statute, with respect to any dispute arising between the parties as to the interpretation or application of that agreement.

Model jurisdictional clauses are attached in annex 4.

**(d) On the basis of specific provisions contained in the Convention
("compulsory jurisdiction")**

Even in the absence of declarations made under article 287 of the Convention, the Tribunal has compulsory jurisdiction in two instances where the parties to a dispute have failed to agree, within a given period of time, to submit their dispute to another court or tribunal. These instances are requests for the prescription of provisional measures pending the constitution of an arbitral tribunal (article 290, paragraph 5, of the Convention) and requests for the prompt release of vessels and crews (article 292 of the Convention). The majority of cases submitted to the Tribunal since the commencement of its activities in 1996 have been initiated on the basis of these provisions of the Convention. These cases may be instituted by unilateral application from any State Party to the Convention. For such proceedings, the Tribunal makes its decisions without delay, within a period of approximately one month.

The Seabed Disputes Chamber has compulsory and generally exclusive jurisdiction pursuant to article 187 of the Convention over disputes concerning activities in the Area.

Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community), the parties agreed that the arbitral procedure instituted by Chile under article 287, paragraph 3, of the Convention not be proceeded with and that the dispute be submitted to a special chamber of the Tribunal formed in accordance with article 15, paragraph 2, of the Statute. See *Conservation and Sustainable Exploitation of Swordfish Stocks (Chile/European Community)*, Order of 20 December 2000, ITLOS Reports 2000, p. 148 at p. 149. For the requirements for notification of a special agreement, see p. 11, *infra*.

Chapter 2 of this guide provides practical information and guidance on the preparation and conduct of contentious cases before the Tribunal, as follows:

- Section A addresses proceedings on the merits and incidental proceedings;
- Section B addresses the prescription of provisional measures pending the constitution of an arbitral tribunal; and
- Section C addresses the proceedings concerning the prompt release of vessels and crews.

Advisory jurisdiction

The Seabed Disputes Chamber is competent to give an advisory opinion on legal questions arising within the scope of the activities of the Assembly or Council of the International Seabed Authority (article 191 of the Convention).

The Tribunal may also give an advisory opinion on a legal question if this is provided for by “an international agreement related to the purposes of the Convention” (Rules of the Tribunal, article 138).

Chapter 3 of this guide examines the advisory jurisdiction of the Tribunal.

C. PROCEDURE

Procedure before the Tribunal is governed by the relevant provisions of the Convention, the Statute of the Tribunal (Annex VI to the Convention), the Rules of the Tribunal, the Resolution on the Internal Judicial Practice of the Tribunal and the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal (these texts are available on the Tribunal’s website: www.itlos.org).

Proceedings before the Tribunal generally comprise two phases: written and oral (Rules, article 44, paragraph 1). Proceedings are to be conducted without unnecessary delay or expense (Rules, article 49).

The parties may jointly propose particular modifications or additions to the Rules concerning procedure, which may be applied by the Tribunal or a chamber of the Tribunal if the Tribunal or the chamber considers them appropriate in the circumstances of the case (Rules, article 48).⁷

The official languages of the Tribunal are English and French. A party may use a language other than one of the official languages for its pleadings or documents annexed thereto, but a certified translation into one of the official languages must be submitted together with the pleading or document (Rules, article 64, paragraphs 2 and 3).

⁷ This option was exercised by the parties to the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*, see *Order of 20 December 2000, ITLOS Reports 2000*, p. 148.

The oral proceedings are conducted in the Tribunal's two official languages. Whenever a language other than an official language is used, the necessary arrangements for interpretation into one of the official languages shall be made by the party concerned (Rules, article 85).

Communications to the Tribunal, including notifications and documents, in relation to a case are to be addressed to the Registrar.

D. COSTS

Recourse to the Tribunal incurs no court costs or fees payable to the Tribunal for the States Parties to the Convention. When an entity other than a State Party or the International Seabed Authority is party to a dispute, the Tribunal fixes the amount which that party is to contribute towards the expenses of the Tribunal (Statute, article 19).

Unless decided otherwise by the Tribunal, each party bears its own costs (fees for counsel and advocates, transportation, accommodation, photocopying of pleadings) pursuant to article 34 of the Statute.

A trust fund to assist developing States to settle their disputes through the Tribunal has been set up by the Secretary-General of the United Nations, following a decision of the General Assembly. Further information about the fund can be found on the United Nations' website:

http://www.un.org/Depts/los/ITLOS/itlos_trust_fund.htm.

E. EQUIPMENT

The Tribunal has one main courtroom, convertible into three smaller courtrooms, equipped with advanced technology (audio-visual equipment, overhead projecting equipment, videoconferencing facilities and interpretation booths).

Conference rooms (equipped with a photocopier, a computer with Internet access, and a fax machine) are placed at the disposal of the parties for the duration of the hearing.

The parties also have access to the Tribunal's library.

F. FURTHER INFORMATION

Further information is available on the Tribunal's website (www.itlos.org).

The text of the Tribunal's decisions may be consulted on the Tribunal's website, which also has a select bibliography on the settlement of disputes concerning the law of the sea.

CHAPTER 2

CONTENTIOUS PROCEEDINGS

A. PROCEEDINGS ON THE MERITS AND INCIDENTAL PROCEEDINGS

Relevant provisions
<ul style="list-style-type: none"> • Part XV, Section 2, of the Convention • Articles 24 to 34 of the Statute • Articles 54 to 88 of the Rules

The Tribunal has jurisdiction:

- over any dispute concerning the interpretation or application of the Convention (Convention, article 288, paragraph 1);
- over any dispute concerning the interpretation or application of any other agreement which confers jurisdiction on the Tribunal (Statute, article 21).

I. SUBMISSION OF A DISPUTE TO THE TRIBUNAL

What type of dispute can be submitted to the Tribunal?

Subject to the limitations and exceptions contained in Part XV, Section 3, of the Convention, any dispute concerning the interpretation or application of the Convention may, where no settlement has been reached by recourse to section 1 of Part XV, be submitted to the Tribunal (Convention, article 286).

Any dispute concerning the interpretation or application of an international agreement related to the purposes of the Convention may be submitted to the Tribunal in accordance with the terms of that agreement (Convention, article 288, paragraph 2).⁸

How are proceedings instituted before the Tribunal?

Proceedings may be instituted before the Tribunal either by notification of a special agreement between the parties to submit a dispute to the Tribunal (Statute, article 24, paragraph 1; Rules, article 55) or by written application (Statute, article 24, paragraph 1; Rules, article 54).

⁸ See also article 21 of the Statute which provides as follows: "The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal."

Notification of a special agreement

What are the requirements for notification of a special agreement?

Notification of a special agreement to submit a dispute to the Tribunal may be effected by the parties jointly or by any one or more of them (article 55, paragraph 1, of the Rules).

The notification must:

- be accompanied by an original or certified copy of the special agreement (Rules, article 55, paragraph 2); and
- indicate the precise subject of the dispute and identify the parties to it, in so far as this is not already apparent from the agreement (Rules, article 55, paragraph 2).

A model form for notification of a special agreement
is attached as annex 5.

Written application

When can a party to a dispute submit an application instituting proceedings before the Tribunal?

A unilateral written application may be made by a party to a dispute:

- when this is provided for by an agreement between the parties to the dispute;
- when both parties to the dispute have accepted the jurisdiction of the Tribunal as one of the means for the settlement of disputes concerning the interpretation or application of the Convention by means of a written declaration made in accordance with article 287 of the Convention (see “How can a dispute be submitted to the Tribunal?” in Chapter 1, *supra*); and
- when a case is submitted to the Seabed Disputes Chamber.⁹

What must an application specify?

The application must:

- indicate the party making it, the party against which the claim is brought and the subject of the dispute;
- specify the legal grounds upon which the jurisdiction of the Tribunal is said to be based; and

⁹ An application may also be submitted in cases concerning requests for the prescription of provisional measures pending the constitution of an arbitral tribunal, pursuant to article 290, paragraph 5, of the Convention and for the prompt release of vessels and their crews, pursuant to article 292 of the Convention; see Chapter 2, Sections B and C, *infra*.

- specify the precise nature of the claim, together with a succinct statement of the facts and grounds upon which the claim is based (Rules, article 54, paragraphs 1 and 2).

The general requirements for making an application are listed in annex 6. A model form for an application is attached as annex 7.

What steps are taken after the application has been filed or notification of a special agreement effected?

By the Registrar

- Upon receipt of an application, the Registrar must immediately transmit a certified copy of it to the respondent (Rules, article 54, paragraph 4).
- If the notification of a special agreement is not a joint one, a certified copy of it is communicated by the Registrar to any other party (Rules, article 55, paragraph 1).
- The application or special agreement is notified by the Registrar to all concerned and to all States Parties to the Convention (Statute, article 24, paragraphs 2 and 3).

By the parties

- All steps taken on behalf of the parties after proceedings have been instituted must be taken by agents. Agents must have an address for service in Hamburg or Berlin, to which all communications concerning the case are to be sent (Rules, article 56, paragraph 1).
- When proceedings have been instituted by means of an application, the name of the applicant's agent must be stated. The respondent, upon receipt of the certified copy of the application, or as soon as possible thereafter, must inform the Tribunal of the name of its agent (Rules, article 56, paragraph 2).
- When proceedings are brought by notification of a special agreement, the party/parties making the notification must state the name(s) of the agent(s). Any other party, upon receiving the certified copy of the notification, or as soon as possible thereafter, must inform the Tribunal of the name of its agent if it has not already done so (Rules, article 56, paragraph 3).

A model form for the notification of the appointment of an agent is attached as annex 13.

By an international organization which is a party to the dispute

- An international organization which is a party to the dispute may be requested by the Tribunal, at the request of any other party or *proprio motu*, to provide information as to which, as between the organization and its member States, has competence in respect of any specific question which has arisen. The proceedings may be suspended until such information is received (Rules, article 57, paragraph 2).

By the President

- The President will consult the parties with regard to questions of procedure (e.g., concerning written pleadings and the preparation of the hearing).

II. WRITTEN PROCEEDINGS

The written proceedings consist of the communication to the Tribunal and to the parties of the pleadings, that is, of memorials, counter-memorials and, if the Tribunal so authorizes, a reply and a rejoinder, as well as all documents in support. The presentation of replies and rejoinders is authorized only where the Tribunal finds them to be necessary (Rules, article 44, paragraph 2; article 60; article 61, paragraph 3).

What do the pleadings comprise?

In a case instituted by means of an application, the pleadings comprise:

- a memorial filed by the applicant; and
- a counter-memorial filed by the respondent (Rules, article 60, paragraph 1).

Model forms for a memorial and a counter-memorial are attached as annexes 8 and 9.

If the parties are agreed or the Tribunal decides these are necessary, the following pleadings may be filed:

- a reply by the applicant; and
- a rejoinder by the respondent (Rules, article 60, paragraph 2).

In a case submitted by special agreement, the number and order of the pleadings are to be governed by the provisions of the said agreement, unless the Tribunal decides otherwise after ascertaining the views of the parties. In the absence of any such provisions or subsequent agreement by the parties on the number and order of pleadings, the parties must each file a memorial and counter-memorial, within the same time-limits. The presentation of replies and rejoinders is to be authorized only where the Tribunal finds them to be necessary (Rules, article 61).

What are the formal requirements for the pleadings?

The original of each pleading must be:

- signed by the agent;
- dated (the date of its receipt in the Registry is regarded by the Tribunal as the material date (Rules, article 65, paragraphs 1 and 2)); and
- transmitted to the Registry by the agent.

The original of each pleading must be accompanied by:

- a certified copy of the pleading, any document annexed thereto and any translations, for communication to the other party (Rules, article 63, paragraph 1, and article 65, paragraph 1); and
- a list of all documents annexed to the pleading (Rules, article 63, paragraph 3);
- a translation of the pleading or supporting documentation into one of the official languages of the Tribunal (English and French), certified as accurate by the party submitting it, if the pleading is in a language other than one of the official languages of the Tribunal (Rules, article 64, paragraphs 1, 2 and 3); and
- the number of additional copies of the pleading and supporting documentation required by the Registrar (Rules, article 65, paragraph 1; Guidelines, paragraph 9).

Upon receipt of a pleading, a certified copy thereof and any document annexed thereto produced by one party is to be communicated by the Registrar to the other party (Rules, article 66).

If a pleading does not satisfy the formal requirements of the Rules, the Registrar will return it to the party concerned for rectification.

Parties are advised to consult the Tribunal's Guidelines concerning the preparation and presentation of cases (the text is available on the Tribunal's website: www.itlos.org) for further detailed information on the presentation of pleadings.

What are the time-limits for the pleadings?

In the light of the views of the parties ascertained by the President, the Tribunal makes the necessary orders to determine, *inter alia*, the number of pleadings, the order in which they are to be filed and the time-limits within which they must be filed. The time-limits for each pleading shall not exceed six months (Rules, article 59, paragraph 1). However, the Tribunal may extend any time-limit at the request of a party, provided it is satisfied that there is adequate justification for the request. The other party shall be given the opportunity to state its views on the request (Rules, article 59, paragraph 2).

III. INITIAL DELIBERATIONS

Prior to the opening of the oral proceedings, the Tribunal meets to exchange views concerning the written pleadings and conduct of the case (Rules, article 68; Resolution, article 3).

IV. ORAL PROCEEDINGS

The oral proceedings consist of the hearing by the Tribunal of agents, counsel, advocates, witnesses and experts (Rules, article 44, paragraph 3).

When does the hearing take place?

The date for the opening of the oral proceedings as fixed by the Tribunal falls within a period of six months from the closure of the written proceedings unless the Tribunal is satisfied that there is justification for deciding otherwise. The Tribunal may also decide that the opening or continuance of the oral proceedings be postponed (Rules, article 69, paragraph 1).

In fixing the date for the opening of the oral proceedings, the Tribunal will have regard to:

- the need to hold the hearing without unnecessary delay;
- the priority required by articles 90 (provisional measures) and 112 (prompt release) of the Rules;
- special circumstances, including the urgency of the case; and
- the views expressed by the parties (Rules, article 69, paragraph 2).

Are the hearings public?

The hearings are public, unless the Tribunal decides otherwise or the parties request that the public not be admitted (Statute, article 26, paragraph 2; Rules, article 74).

What steps must be taken by the parties prior to the hearing?

Each party is requested to communicate to the Registrar, in sufficient time before the opening of the oral proceedings, information regarding evidence which it intends to produce or which it intends to request the Tribunal to obtain. The communication must contain information regarding witnesses and experts whom the party intends to call (Rules, article 72).

Prior to the opening of the oral proceedings, each party should submit to the Tribunal:

- a brief note on the points that still divide the parties;
- a brief outline of the arguments that it wishes to make in its oral statement; and
- a list of authorities proposed to be relied upon in its oral statement. (Guidelines, paragraph 14).

V. JUDGMENT

The judgment is read at a public sitting of the Tribunal, the time and date of which are made known to the parties (Rules, article 124).

When does the judgment become binding on the parties?

The judgment becomes binding on the parties to the dispute on the day of its reading (Rules, article 124, paragraph 2).

Is there a right of appeal?

The decision of the Tribunal is final and shall be complied with by all parties to the dispute (Statute, article 33, paragraph 1).

In the event of a dispute as to the meaning or scope of the decision, the Tribunal shall construe it upon the request of any party (Statute, article 33, paragraph 3; Rules, article 126).

Is it possible for the judgment to be revised?

A party may request a judgment to be revised only when the request is based upon the discovery of some fact of such a nature as to be a decisive factor. This fact must have been unknown to the Tribunal and also to the party requesting revision at the time when the judgment was given, provided such ignorance was not due to negligence. A request for revision must be made at the latest within six months of the discovery of the new fact and before the lapse of ten years from the date of the judgment (Rules, article 127, paragraph 1).

VI. INCIDENTAL PROCEEDINGS

Relevant provisions
<ul style="list-style-type: none"> • Articles 290 and 294 of the Convention • Articles 25, 31, 32 of the Statute • Articles 89 to 106 of the Rules

There are six types of incidental proceedings which may be filed during the course of contentious proceedings on the merits: provisional measures, preliminary proceedings, preliminary objections, counter-claims, intervention and discontinuance.

Provisional measures

A request for the prescription of provisional measures under article 290, paragraph 1, of the Convention may be submitted by a party at any time during the course of the

proceedings in a dispute submitted to the Tribunal (Rules, article 89, paragraph 1). The request must be in writing and must specify the measures requested, the reasons therefor, and the possible consequences, if it is not granted, for the preservation of the respective rights of the parties or for the prevention of serious harm to the marine environment (Rules, article 89, paragraph 3). The Tribunal may also prescribe provisional measures to prevent damage to fish stocks in accordance with article 31, paragraph 2, of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

A request for the prescription of provisional measures may also be submitted under article 290, paragraph 5, of the Convention, pending the constitution of an arbitral tribunal (see Chapter 2, Section B, *infra*).

Preliminary proceedings

The respondent may file a request in writing indicating the grounds for a determination by the Tribunal under article 294 of the Convention that the application is made in respect of a dispute referred to in article 297 of the Convention and that the claim constitutes an abuse of legal process or is *prima facie* unfounded (Convention, article 294; Rules, article 96, paragraph 4). When transmitting an application to the respondent, the Registrar notifies the respondent of the time-limit fixed by the President for requesting a determination under article 294 of the Convention (Rules, article 96, paragraph 2). The Tribunal may also determine *proprio motu* whether the claim constitutes an abuse of legal process or whether *prima facie* it is well-founded (Convention, article 294; Rules, article 96, paragraphs 1 and 3).

Preliminary objections

Any objection to the jurisdiction of the Tribunal or to the admissibility of an application, or other objection the decision upon which is requested before any further proceedings on the merits, shall be made in writing within 90 days from the institution of proceedings (Rules, article 97, paragraph 1). The other party may present written observations and submissions within a time-limit not exceeding 60 days. The objecting party may present its written observations and submissions in reply within a time-limit not exceeding 60 days from receipt of such observations and submissions.

Counter-claims

A counter-claim may be presented by a party, provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Tribunal. A counter-claim must be made in the counter-memorial of the party presenting it (Rules, article 98).

Intervention

Should a State Party consider that it has an interest of a legal nature which may be affected by the decision in any dispute, it may submit an application for permission to intervene (Statute, article 31) not later than 30 days after the counter-memorial becomes available (Rules, article 99, paragraph 1).

Every State Party to the Convention or party to an international agreement that confers jurisdiction on the Tribunal has the right to intervene in a proceeding that involves the interpretation or application of the Convention or the international agreement (Statute, article 32). If the entity concerned desires to avail itself of this right, a declaration to this effect must be filed not later than 30 days after the counter-memorial becomes available (Rules, article 100, paragraph 1).

In both situations, the parties to the case are invited to furnish their written observations (Rules, article 101, paragraph 1). The Tribunal decides as a matter of priority whether the application for permission to intervene should be granted or whether the declaration of intervention is admissible (Rules, article 102, paragraph 1).

If an application for permission to intervene is granted or a declaration to intervene is admitted, the intervenor will be entitled to be supplied with copies of the pleadings and documents annexed, to submit a written statement within a time-limit to be fixed, and to submit observations on the subject matter of the intervention in the course of the oral proceedings (Rules, articles 103 and 104). In both cases, the decision of the Tribunal shall be binding upon the intervening party in so far as it relates to matters in respect of which that party has intervened (Statute, article 31, paragraph 3, and article 32, paragraph 3).

Discontinuance

A case may be discontinued by agreement of the parties (Rules, article 105, paragraphs 1 and 2).¹⁰ Proceedings instituted by an application may be discontinued upon written notification by the applicant (Rules, article 106). The discontinuance will be recorded in an order of the Tribunal and the Registrar will be directed to remove the case from the List of cases (Rules, articles 105 and 106).

¹⁰ For an example of an instance of discontinuance, see The “*Chaisiri Reefer 2*” Case (*Panama v. Yemen*), Order of 13 July 2001, *ITLOS Reports 2001*, p. 82.

B. PRESCRIPTION OF PROVISIONAL MEASURES UNDER ARTICLE 290, PARAGRAPH 5, OF THE CONVENTION

Relevant provisions
<ul style="list-style-type: none"> • Article 290 of the Convention • Article 25 of the Statute • Articles 89 to 95 of the Rules

Requests for the prescription of provisional measures may be submitted in two situations:

- where a dispute on the merits has been submitted to the Tribunal (Convention, article 290, paragraph 1);¹¹
- where a dispute on the merits has been submitted to an arbitral tribunal, pending its constitution (Convention, article 290, paragraph 5).

This section will address the second situation, in respect of which the Tribunal has compulsory jurisdiction under certain circumstances.

I. SUBMISSION OF A REQUEST TO THE TRIBUNAL

When can a request be made?

When a dispute is submitted to an arbitral tribunal pursuant to the Convention, a request for the prescription of provisional measures pending the constitution of the arbitral tribunal may be submitted under article 290, paragraph 5, of the Convention:

- at any time if the parties have so agreed; or
- at any time after two weeks from the notification to the other party of a request for provisional measures if the parties have not agreed that such measures may be prescribed by another court or tribunal (Rules, article 89, paragraph 2).

How are proceedings instituted?

In order to submit to the Tribunal a request for the prescription of provisional measures pending the constitution of an arbitral tribunal under article 290, paragraph 5, of the Convention, the following steps must be taken:

- arbitral proceedings should be instituted by written notification to the other party to the dispute; the notification should be accompanied by a statement of the claim and the grounds on which it is based;
- a request for provisional measures should be notified to the other party (the request can be made together with the notification instituting arbitral proceedings); the

¹¹ See Incidental Proceedings, Chapter 2, Section A, VI, *supra*.

notification of the request triggers the two-week time period after which a request for provisional measures may be made to the Tribunal (Rules, article 89, paragraph 2).

Who may submit a request?

A request for provisional measures may be made by a party to the dispute (article 290, paragraph 3, of the Convention).

What are the requirements for the request?

In addition to the general requirements applicable to requests submitted to the Tribunal, which are summarized in annex 6, a request for provisional measures must:

- specify the measures requested;
- specify the reasons for the measures requested;
- specify the possible consequences, if the request is not granted, for the preservation of the respective rights of the parties or the prevention of serious harm to the marine environment;
- indicate the legal grounds upon which the arbitral tribunal to be constituted would have jurisdiction;
- indicate the urgency of the situation;
- be accompanied by a certified copy of the notification or of any other document instituting the proceedings before the arbitral tribunal, as an annex to the request.

(Rules, article 89, paragraphs 3 and 4)

A model form for a request for the prescription of provisional measures under article 290, paragraph 5, of the Convention is attached as annex 10.

What steps are taken after the request has been filed?

- Upon receipt of the request, the Registrar must immediately transmit a certified copy thereof to the respondent.
- When proceedings have been instituted, all steps taken on behalf of the parties must be taken by agents. Agents must have an address for service in Hamburg or Berlin, to which all communications concerning the case are to be sent (Rules, article 56, paragraph 1).
- The respondent, upon receipt of the certified copy of the request, or as soon as possible thereafter, has to inform the Tribunal of the name of its agent (Rules, article 56, paragraph 2).

A model form for the notification of the appointment of an agent is attached as annex 13.

- The President will consult the parties with regard to questions of procedure (e.g., concerning written pleadings and the preparation of the hearing).

II. WRITTEN OBSERVATIONS

A party may present any observations to the Tribunal before the closure of the hearing (Rules, article 90, paragraph 3). In practice, respondents have submitted observations (or a written response) to the Tribunal before the opening of the hearing.

III. ORAL PROCEEDINGS

The oral proceedings consist of the hearing by the Tribunal of agents, counsel, advocates, witnesses and experts (Rules, article 44, paragraph 3).

The hearing is public, unless the Tribunal decides otherwise or unless the parties request that the public not be admitted (Statute, article 26, paragraph 2; Rules, article 74).

When does the hearing take place?

A request for the prescription of provisional measures has priority over all other proceedings before the Tribunal, subject to article 112, paragraph 1, of the Rules (concerning applications for the prompt release of vessels and crews) (Rules, article 90, paragraph 1).

The Tribunal, or the President if the Tribunal is not sitting, must fix the earliest possible date for a hearing by an order (Rules, article 90, paragraph 2). To date, hearings on requests for the prescription of provisional measures have taken place two to three weeks after the request was filed with the Tribunal.

How long is the hearing?

The hearing generally takes place over two days (three if necessary).

Can a party call witnesses or experts?

Either party may call witnesses or experts in accordance with article 78 of the Rules, provided that the party has communicated to the Registrar prior to the opening of the oral proceedings a list of the witnesses and experts whom the party intends to call (Rules, article 72).

IV. ORDER

How quickly can the Tribunal make an order on a request for provisional measures?

To date, the period between the submission of a request and the Tribunal's making an order for the prescription of provisional measures has been approximately one month.

The Tribunal's order concerning the request for provisional measures is read at a public sitting of the Tribunal.

Any provisional measures prescribed by the Tribunal are notified to the parties and to such other States Parties as the Tribunal considers appropriate in each case (Convention, article 290, paragraph 4; Rules, article 94).

What measures may the Tribunal prescribe?

The Tribunal may prescribe measures different in whole or in part from those requested. In its order the Tribunal may also indicate the parties which are to take or to comply with each measure (Rules, article 89, paragraph 5).

Is an order prescribing provisional measures binding on the parties?

Each party is bound to comply promptly with any provisional measures prescribed under article 290 of the Convention (Convention, article 290, paragraph 6).

What must the parties do after the order is issued?

Each party must inform the Tribunal as soon as possible as to its compliance with any measures prescribed by the Tribunal. In particular, each party must submit an initial report upon the steps it has taken or proposes to take in order to ensure prompt compliance with the measures prescribed (Rules, article 95, paragraph 1). The Tribunal may request further information from the parties on any matter connected with the implementation of any provisional measures it has prescribed (Rules, article 95, paragraph 2).

C. PROMPT RELEASE OF VESSELS AND CREWS UNDER ARTICLE 292 OF THE CONVENTION

Relevant provisions
<ul style="list-style-type: none"> • Article 292 of the Convention • Articles 110 to 114 of the Rules

Applications for the prompt release of vessels and crews may be made under article 292 of the Convention in the following circumstances:

- when the authorities of a State Party to the Convention have detained a vessel flying the flag of another State Party to the Convention; and
- it is alleged that the detaining State has not complied with the provisions of the Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security; and
- the parties have not agreed upon the submission of the question of release from detention to any court or tribunal within 10 days from the time of detention.

I. FILING OF AN APPLICATION FOR THE PROMPT RELEASE OF VESSELS AND CREWS

How are proceedings instituted?

Proceedings for the release of a vessel and its crew are instituted by a written application addressed to the Registrar (Statute, article 24, paragraph 1; Convention, article 292, paragraph 1; Rules, article 110, paragraph 1).

Who may file an application?

Application by the flag State

An application for release may be made directly by the flag State of the vessel (Convention, article 292, paragraph 2; Rules, article 110, paragraph 1). In this case, the application follows the general requirements applicable to unilateral applications (see annex 6).

Application on behalf of the flag State

An application may also be made on behalf of the flag State by a person who is authorized to do so by the competent authorities of the flag State. In this case, the application must be accompanied by an authorization to file an application (Rules, article 110, paragraph 2) and by documents stating that the person submitting the

application is the person named in the authorization (Rules, article 110, paragraph 3). Authorization to file an application on a State's behalf must be given by the competent State authorities such as the Minister for Foreign Affairs, the Minister of Justice or Attorney General¹². The application must also contain a certification indicating that a copy of the application and all supporting documentation has been delivered to the flag State.

A model form for authorization to submit an application for the release of a vessel or its crew on behalf of a flag State is attached in annex 11.

What are the requirements for the application?

In addition to the general requirements applicable to any application submitted to the Tribunal, which are summarized in annex 6, an application for the release of a vessel and its crew must:

- contain a succinct statement of the facts and legal grounds upon which the application is based (Rules, article 111, paragraph 1);
- be accompanied by supporting documents annexed to the application (Rules, article 111, paragraph 3).

The statement of facts must:

- specify the time and place of detention of the vessel and the present location of the vessel and crew, if known;
- contain relevant information concerning the vessel and crew, including the name, flag and port or place of registration of the vessel and its tonnage, cargo capacity and data relevant to the determination of its value, the name and address of the vessel owner and operator and particulars regarding its crew;
- specify the amount, nature and terms of the bond or other financial security that may have been imposed by the detaining State and the extent to which such requirements have been complied with;
- contain any further information the applicant considers relevant to the determination of the amount of a reasonable bond or other financial security and to any other issue in the proceedings (Rules, article 111, paragraph 2).

A model form for an application for the prompt release of a vessel or its crew is attached as annex 12.

¹² Prospective parties may contact the Registrar for further information.

What steps are taken after the application has been filed?

- Upon receipt of the application, the Registrar must immediately transmit a certified copy thereof to the respondent (Rules, article 111, paragraph 4).
- When proceedings have been instituted, all steps taken on behalf of the parties shall be taken by agents. Agents must have an address for service in Hamburg or Berlin, to which all communications concerning the case are to be sent (Rules, article 56, paragraph 1).
- The respondent, upon receipt of the certified copy of the application, or as soon as possible thereafter, must inform the Tribunal of the name of its agent (Rules, article 56, paragraph 2).

A model form for the notification of the appointment of an agent is attached as annex 13.

- The President will consult the parties with regard to questions of procedure (e.g., concerning written pleadings and the preparation of the hearing).

II. STATEMENT IN RESPONSE

The detaining State may file a statement in response to the application for the release of a vessel and its crew, with supporting documents annexed, as soon as possible, but not later than 96 hours before the hearing (Rules, article 111, paragraph 4). This statement provides the detaining State with the opportunity to present its case in writing before the hearing. It also contributes to a better preparation of the oral proceedings. In this respect, it should be observed that, after the closure of the written proceedings, no further document may be submitted by either party except with the consent of the other party or the authorization of the Tribunal (Rules, article 71). In addition, the Tribunal may, at any time, require further information to be provided in a supplementary statement (Rules, article 111, paragraph 5).

III. ORAL PROCEEDINGS

The oral proceedings consist of the hearing by the Tribunal of agents, counsel, advocates, witnesses and experts (Rules, article 44, paragraph 3).

The hearing is public, unless the Tribunal decides otherwise or unless the parties request that the public not be admitted (Statute, article 26, paragraph 2; Rules, article 74).

When does the hearing take place?

The Tribunal gives priority to applications for the release of vessels or crews over all other proceedings pending before the Tribunal. However, if the Tribunal is seized of an

application for release of a vessel or crew and of a request for the prescription of provisional measures, it must take the necessary measures to ensure that both the application and the request are dealt with without delay (Rules, article 112, paragraph 1).

The Tribunal, or the President if the Tribunal is not sitting, must fix the earliest possible date, within a period of 15 days commencing with the first working day following the date on which the application is received, for a hearing.

How long is the hearing?

Unless otherwise decided, each of the parties shall be accorded one day to present its evidence and arguments at the hearing (Rules, article 112, paragraph 3).

Can a party call witnesses or experts?

Either party may call witnesses or experts in accordance with article 78 of the Rules, provided that the party has communicated to the Registrar prior to the opening of the oral proceedings a list of the witnesses and experts whom the party intends to call (Rules, article 72).

IV. JUDGMENT

The Tribunal, in dealing with the application, deals only with the question of release of the vessel or its crew, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew (Convention, article 292, paragraph 3).

In its judgment, the Tribunal determines whether or not the allegation made by the applicant that the detaining State has not complied with a provision of the Convention for the prompt release of the vessel or the crew upon the posting of a reasonable bond or other financial security is well-founded (Rules, article 113, paragraph 1). If the Tribunal decides that the allegation is well-founded, it must determine the amount, nature and form of the bond or financial security to be posted for the release of the vessel or the crew (Rules, article 113, paragraph 2).

Unless the parties agree otherwise, the Tribunal shall determine whether the bond or other financial security shall be posted with the Registrar or with the detaining State (Rules, article 113, paragraph 3). If the bond or other financial security has been posted with the Registrar, the detaining State shall be promptly notified thereof (Rules, article 114, paragraph 1).

For the “Guidelines concerning the posting of a bond or other financial security with the Registrar”, see www.itlos.org.

How quickly can the Tribunal adopt a judgment?

A judgment must be adopted as soon as possible and must be read at a public sitting of the Tribunal to be held not later than 14 days after the closure of the hearing (Rules, article 112, paragraph 4). The parties must be notified of the date of the sitting. The judgment becomes binding on the parties on the day of the reading (Rules, article 124, paragraph 2). In accordance with the time-limits fixed in the Rules, the period of time between the filing of an application and the delivery of the judgment does not exceed four weeks.

How can the parties comply with the judgment?

The bond or other financial security for the release of the vessel or its crew must be posted in accordance with the judgment.

Upon the posting of the bond or other financial security, the authorities of the detaining State must comply promptly with the Tribunal's decision concerning the release of the vessel or its crew (Convention, article 292, paragraph 4).

CHAPTER 3

ADVISORY PROCEEDINGS

There are two types of advisory proceedings:

- advisory proceedings before the Seabed Disputes Chamber; and
- advisory proceedings before the Tribunal.

A. ADVISORY PROCEEDINGS BEFORE THE SEABED DISPUTES CHAMBER

Relevant provisions	
•	Articles 159, paragraph 10, and 191 of the Convention
•	Articles 20, 21, 40 of the Statute
•	Articles 130 to 137 of the Rules

I. Submission of the request for an advisory opinion

Who may request the Chamber to give an advisory opinion?

The Assembly of the International Seabed Authority may request the Chamber to give an advisory opinion on the conformity with the Convention of a proposal before the Assembly on any matter (Convention, article 159, paragraph 10). The Assembly or Council of the International Seabed Authority may request the Chamber to give an advisory opinion on legal questions arising within the scope of their activities (Convention, article 191).

How is the request made?

A request for an advisory opinion is submitted to the Chamber by the competent body (Assembly or Council). The request indicates precisely the question to be submitted to the Chamber and is signed by the duly authorized representative of the International Seabed Authority. The request also indicates the name of the representative of the Authority.

Attached to the request are all documents which might shed light on the matter. These documents are sent to the Chamber at the same time as the request for an advisory opinion or as soon as possible thereafter in the number of copies required by the Registry (Rules, article 131).

May the parties appoint a judge *ad hoc*?

When the request has been filed, the Chamber considers whether it concerns a legal matter pending between two or more parties. If the Chamber decides that this is the case, article 17 of the Statute and articles 19 to 22 of the Rules apply. Accordingly, the parties

concerned may, under certain conditions set out in the above-mentioned articles, appoint a judge *ad hoc* (Rules, article 130, paragraph 2).

II. Proceedings

What steps do the written proceedings involve?

The Registrar forthwith gives notice of the request for an advisory opinion to all States Parties (Rules, article 133, paragraph 1).

The Chamber, or its President if the Chamber is not sitting, identifies the intergovernmental organizations likely to be able to provide information on the question. The Registrar informs these organizations of the request (Rules, article 133, paragraph 2).

The States Parties and intergovernmental organizations so identified are invited to submit written statements on the question within a time-limit set by the Chamber or its President if the Chamber is not sitting. These statements are communicated to States Parties and organizations which have made written statements. The Chamber, or its President if the Chamber is not sitting, may fix a further time-limit within which these States Parties and organizations may submit written statements on the statements already made (Rules, article 133, paragraph 3).

The written statements and documents annexed thereto are made accessible to the public as soon as possible after they have been submitted to the Chamber (Rules, article 134).

Do advisory proceedings necessarily comprise an oral stage?

The Chamber, or its President if the Chamber is not sitting, decides whether oral proceedings will be held and, if so, fixes the date for the opening of such proceedings. States Parties and intergovernmental organizations likely to be able to provide information on the question are invited to make oral statements at these proceedings (Rules, article 133, paragraph 4).

III. Advisory opinion

The advisory opinion is read at a public sitting of the Chamber (Rules, article 135, paragraph 1).

How much time does the Chamber need in order to give its advisory opinion?

Advisory opinions are given by the Chamber “as a matter of urgency” (Convention, article 191).

B. ADVISORY PROCEEDINGS BEFORE THE TRIBUNAL

Relevant provisions	
•	Articles 20 and 21 of the Statute
•	Article 138 of the Rules

When may the Tribunal given an advisory opinion?

The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion (Rules, article 138, paragraph 1).

Who may submit a request for an advisory opinion?

Any body or entity so designated by or in accordance with an international agreement may submit a request for an advisory opinion.

How is the Tribunal seized of a request for an advisory opinion?

Advisory proceedings are instituted before the Tribunal by the submission of a request for an advisory opinion. The request is made by the entity designated by or in accordance with the international agreement in question. The request is signed by the duly authorized representative of such entity.

The request states precisely the question of interest and comprises all documents which may shed light on the matter.

Which procedural rules apply to advisory proceedings before the Tribunal?

The rules applicable to advisory proceedings before the Chamber (Rules, articles 130 to 137) apply *mutatis mutandis* to advisory proceedings before the Tribunal (Rules, article 138, paragraph 3).

[PHOTO]

The seat of the Tribunal in Hamburg, Germany. Photo: YPScollection

[PHOTO]

The 21 Judges of the Tribunal, Registrar and Deputy Registrar. Photo: Stephan Wallocha

[PHOTO]

The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures (hearing).
Photo: Stephan Wallocha

[PHOTO]

The "Juno Trader" Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release (hearing, representatives of Guinea-Bissau). Photo: Stephan Wallocha

[PHOTO]

*Case concerning Land Reclamation by Singapore in and around the Straits of Johor
(Malaysia v. Singapore), Provisional Measures (hearing, representatives of Singapore).*
Photo: Stephan Wallocha

[PHOTO]

*Case concerning Land Reclamation by Singapore in and around the Straits of Johor
(Malaysia v. Singapore), Provisional Measures (representatives of Malaysia).*
Photo: Stephan Wallocha

Annex 1**List of multilateral agreements conferring jurisdiction on the Tribunal¹³**

- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; 24 November 1993;
- Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks; 4 August 1995;
- 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972; 7 November 1996;
- Framework Agreement for the Conservation of the Living Marine Resources on the High Seas of the South-Eastern Pacific; 14 August 2000;
- Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean; 5 September 2000;
- Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean; 20 April 2001;
- Convention on the Protection of the Underwater Cultural Heritage; 2 November 2001;
- Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries; 18 November 1980, as amended on 11 November 2004;
- Southern Indian Ocean Fisheries Agreement; 7 July 2006;
- Nairobi International Convention on the Removal of Wrecks; 18 May 2007.

¹³ The list is not necessarily exhaustive.

Annex 2**Declaration under article 287 of the Convention
accepting the jurisdiction of the Tribunal***

In accordance with article 287, paragraph 1, of the United Nations Convention on the Law of the Sea, the Government of [NAME] declares that it accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of disputes concerning the interpretation or application of the Convention.

* The declaration may be made by a State when signing, ratifying or acceding to the Convention or at any time thereafter. The declaration shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties (Convention, article 287, paragraphs 1 and 8).

Annex 3**Special Agreement Instituting Proceedings before the
International Tribunal for the Law of the Sea**

[Identity of the parties to the agreement, for example:]

The Government of ... and the Government of ...,

or

The Government of... and the [International Organisation]

Considering that a dispute has arisen between them concerning [...];

Desiring that this dispute should be settled by a decision of the International Tribunal for the Law of the Sea ("Tribunal") [or by a special chamber of the Tribunal formed pursuant to article 15, paragraph 2, of the Statute];

Have agreed as follows:

Article 1

The Tribunal / [Chamber] is requested to determine [questions submitted to the Tribunal/Chamber].

Article 2

The contracting Parties agree that the written proceedings should consist of:

- (1) a Memorial of the [Government of ...] to be submitted within [...] months of the Notification of the present Agreement to the Tribunal/ [Chamber];
- (2) a Counter-Memorial of the [Government of ...] to be submitted within [...] months of delivery of the Memorial.

[Article 3

for entities not parties to the United Nations Convention on the Law of the Sea

Both parties agree to comply with the terms of the Statute of the Tribunal, contained in Annex VI to the 1982 United Nations Convention on the Law of the Sea]

[Article 4

where the dispute is being submitted to a special chamber of the Tribunal

The dispute shall be resolved by a special chamber of the Tribunal, composed of [five] judges, pursuant to article 15, paragraph 2, of the Statute of the Tribunal.

If the parties cannot agree on the composition of the chamber, any party may, after a period of 60 days following the date of the notification of this Agreement to the Tribunal, request the

President of the Tribunal to determine the composition of the chamber. If the President is unable to act or is a national of one of the parties to the dispute, the composition of the Chamber shall be determined by the next available senior member of the Tribunal who is not a national of one of the parties to the dispute.]

Article 5

The present Agreement shall enter into force upon signature. It shall be notified to the Tribunal pursuant to article 24, paragraph 1, of the Statute of the Tribunal. The notification may be done jointly or by any party to the Agreement.

or

This Agreement shall enter into force on the first day of the month following the date of receipt of the last of the notifications by which the parties have informed each other of the completion of their respective formal requirements for the entry into force of this Agreement.

Upon entry into force of the present Agreement, it shall be notified to the Tribunal pursuant to article 24, paragraph 1, of the Statute of the Tribunal. The notification may be done jointly or by any party to the Agreement.

or

The present Agreement shall be subject to ratification. The instruments of ratification shall be exchanged as soon as possible in [...] and the present Agreement shall enter into force immediately upon the exchange of those instruments.]

Upon entry into force of the present Agreement, it shall be notified to the Tribunal pursuant to article 24, paragraph 1, of the Statute of the Tribunal. The notification may be done jointly or by any party to the Agreement.

Article 6

In witness whereof the undersigned, being duly authorized thereto, have signed the present Agreement.

Done in duplicate at [place], on [date], both texts being equally authoritative.

<i>Name of signatory</i> <i>Position</i>	<i>Name of signatory</i> <i>Position</i>
---------------------------------------------	---------------------------------------------

Annex 4**Jurisdictional Clauses**

[For inclusion in an Agreement conferring jurisdiction on the International Tribunal for the Law of the Sea or a special chamber of the Tribunal formed pursuant to article 15, paragraph 2, of the Statute]

Clause conferring jurisdiction on the
International Tribunal for the Law of the Sea

Any dispute between the contracting parties relating to the interpretation or application of the provisions of this Agreement [which cannot be resolved through negotiations between the parties within [a reasonable period of time] following the notification by one party to the other party of the existence of a dispute] shall, at the request of any party to the Agreement, be submitted to the International Tribunal for the Law of the Sea.

Clause conferring jurisdiction on a special chamber
formed pursuant to article 15, paragraph 2, of the Statute

1. Any dispute relating to the interpretation or application of the provisions of this agreement [which cannot be resolved through consultations between the parties within [a reasonable period of time] following the notification by one party to the other party of the existence of a dispute] shall, at the request of any party to the agreement, be submitted to a special chamber of the International Tribunal for the Law the Sea (hereinafter the "Tribunal"), composed of [five] judges, pursuant to article 15, paragraph 2, of the Statute of the Tribunal.
2. If the parties cannot agree on the composition of the chamber, any party may, after a period of 60 days following the date of the request referred to in paragraph 1 above, request the President of the Tribunal to determine the composition of the chamber. If the President is unable to act or is a national of one of the parties to the dispute, the composition of the Chamber shall be determined by the next available senior member of the Tribunal who is not a national of one of the parties to the dispute.

Annex 5**Notification of a Special Agreement****[Place and Date]**[To be addressed to the Registrar]*

Sir,

Pursuant to article 55 of the Rules of the Tribunal, I have the honour to notify the International Tribunal for the Law of the Sea of a Special Agreement to submit a dispute to the Tribunal, concluded between the Government of [...] and the Government of [...] on [date] regarding [a dispute concerning ...] (*precise indication of the subject of the dispute*).

Pursuant to article 56, paragraph 3, of the Rules of the Tribunal, I further have the honour to notify the Tribunal that the Government of [...] has appointed [Mr ... / Ms ...] as its Agent for the purpose of all proceedings in connection with the dispute concerning [...]. [Mr ...'s / Ms ...'s] contact details are as follows: [*Address, telephone number, facsimile, email*]

The address for service to which all communications concerning the case are to be sent in accordance with article 56, paragraph 1, of the Rules is as follows: [*Address in Hamburg or Berlin*].

Yours faithfully,

[Signature of Head of State, Head of Government, Minister of Foreign Affairs, Minister of Justice/Attorney General or diplomatic representative]

Name of signatory**
Position

ANNEX

[The original or a certified copy of the Special Agreement shall accompany the Notification.

When proceedings are instituted on the basis of an agreement other than the Convention, the notification shall be accompanied by a certified copy of the agreement in question (Rules, article 57, paragraph 1).]

* The parties may also elect to file a joint notification of a special agreement (Rules, article 55, paragraph 1).

** If the signatory is not a Head of State, Head of Government, Minister of Foreign Affairs, Minister of Justice/Attorney General or diplomatic representative, the signature must be authenticated by one of the latter or by any other competent governmental authority: see the model form contained in annex 14.

Annex 6

General requirements for an application

Submission of the application

The application must be submitted in writing to the Registrar of the Tribunal (submission may be made in person, by courier or regular mail, or by facsimile or electronic mail, provided that it is followed promptly by the original).

Form and content of the application

The application must:

- indicate the party making the application, the party against which the claim is brought and the subject of the dispute (Rules, article 54, paragraph 1);
- specify as far as possible the legal grounds upon which the jurisdiction of the Tribunal is said to be based (Rules, article 54, paragraph 2);
- indicate the name of the applicant's agent;
- be signed by an agent of the party or a diplomatic representative of the party in Germany or by some other duly authorized person. If the signatory is not a Head of State, Head of Government, Minister of Foreign Affairs, Minister of Justice/Attorney General or diplomatic representative, the signature must be authenticated by one of the latter or by any other competent governmental authority (Rules, article 54, paragraph 3);

A model form for the authentication of the agent's signature is attached as annex 14. A model form for the combined notification of the appointment of an agent and authentication of the agent's signature is attached as annex 15.

- be dated; and
- be complete and legible.

Documents accompanying submission of the application

The application must be accompanied by the following documentation:

- when proceedings are instituted on the basis of an agreement other than the Convention, a certified copy of the agreement in question (Rules, article 57, paragraph 1);
- the number of additional copies of the application and supporting documentation required by the Registrar; and
- a list of all documents annexed to the application.

Language of application and supporting documentation

- The application and supporting documentation must be in one or both of the official languages of the Tribunal (English and French).
- If a language other than one of the official languages of the Tribunal is used, a translation into one of the official languages, certified as accurate by the party submitting it, must be submitted with the original.

See also the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal, which are available on the Tribunal's website: www.itlos.org.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

[NAME OF CASE]

[NAME OF APPLICANT] v. [NAME OF RESPONDENT]
(Applicant) (Respondent)

**APPLICATION INSTITUTING PROCEEDINGS BEFORE THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**

[DD MONTH YYYY]

**Application Instituting Proceedings before the
International Tribunal for the Law of the Sea**

[Place and date]

[To be addressed to the Registrar]

Sir,

I, *[the undersigned]*, have the honour to submit to the International Tribunal for the Law of the Sea* an Application instituting proceedings on behalf of *[name of Applicant]* against *[name of Respondent]* in the following case concerning [...].

[Here follows a statement specifying the following:]

- (a) the legal grounds upon which the jurisdiction of the Tribunal is based;
- (b) the precise nature of the claim; and
- (c) a succinct statement of the facts and grounds upon which the claim is based.

Accordingly, the *[Applicant]* requests the Tribunal *[to adjudge and declare: ...]*.

Pursuant to article 56, paragraph 2, of the Rules, *[Mr ... / Ms ...]* has been appointed by *[the Applicant]* as its Agent for the purpose of all proceedings in connection with this Application.

[Mr ...'s / Ms ...'s] contact details are as follows: *[Address, telephone number, facsimile, email address]*

The address for service to which all communications concerning the case are to be sent in accordance with article 56, paragraph 1, of the Rules is as follows: *[Address in Hamburg or Berlin]*.

Respectfully submitted,

*[Signature of Head of State, Head of
Government, Minister of Foreign
Affairs, Minister of Justice/Attorney
General or diplomatic representative]*

Name of signatory**

Position

* The Parties may request that a special chamber be formed to deal with their particular dispute. The Tribunal has also constituted the following standing Special Chambers: the Chamber for Fisheries Disputes, the Chamber for Marine Environment Disputes, the Chamber for Maritime Delimitation Disputes and the Chamber of Summary Procedure.

** If the signatory is not a Head of State, Head of Government, Minister of Foreign Affairs, Minister of Justice/Attorney General or diplomatic representative, the signature must be authenticated by one of the latter or by any other competent governmental authority: see the model form contained in annex 14.

ANNEXES

[When proceedings are instituted on the basis of an agreement other than the Convention, the Application shall be accompanied by a certified copy of the agreement in question (Rules, article 57, paragraph 1).]

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

[NAME OF CASE]

[NAME OF APPLICANT] v. [NAME OF RESPONDENT]
(Applicant) (Respondent)
[Application]

[PARTY] / [PARTY]
[Special Agreement]

MEMORIAL
SUBMITTED BY [APPLICANT]

[DD MONTH YYYY]

MEMORIAL

CHAPTER 1 INTRODUCTION

Proceedings in the case were instituted on [date] by application/notification of a special agreement. The proceedings were brought before the International Tribunal for the Law of the Sea/[Name of chamber] under article [...] of the 1982 United Nations Convention on the Law of the Sea (hereinafter “the Convention”) [and article [...] of the Statute, Annex VI to the Convention] in relation to the dispute concerning [...].

Pursuant to the Order [of the Tribunal] [of the President of the Tribunal] dated [...], the [Applicant] has the honour to set forth the grounds of fact and of law on which its claim is based.

CHAPTER 2 STATEMENT OF THE RELEVANT FACTS

This chapter includes a succinct description of the facts relevant to the dispute.

CHAPTER 3 STATEMENT OF LAW

The Memorial shall include a statement of law (Rules, article 62, paragraph 1).

This chapter deals with issues such as jurisdiction, admissibility of the claim, and the legal grounds upon which the Application is based.

CHAPTER 4 SUBMISSIONS

This chapter deals with the orders sought or relief requested.

For example:

[Accordingly/For the reasons set out above, the Applicant requests the Tribunal to adjudge and declare that ...].

[Place and Date]

[Signature of Agent]

Name of signatory
Agent for the [Applicant]

LIST OF DOCUMENTS

ANNEXES

Certified copies of relevant documents adduced in support of the contentions in the pleading shall be annexed.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

[NAME OF CASE]

[NAME OF APPLICANT] v. [NAME OF RESPONDENT]
(Applicant) (Respondent)
[Application]

[PARTY] / [PARTY]
[Special Agreement]

COUNTER-MEMORIAL
SUBMITTED BY [*RESPONDENT*]

[DD MONTH YYYY]

COUNTER-MEMORIAL

CHAPTER 1 INTRODUCTION

Pursuant to the Order [of the Tribunal] [of the President], dated [...], the [Respondent] has the honour to submit to the International Tribunal for the Law of the Sea its Counter-Memorial to the Memorial of [Applicant], filed in the Registry on [date].

CHAPTER 2 STATEMENT OF RELEVANT FACTS

This section shall contain an admission or denial of the facts stated in the memorial and any additional facts, if necessary.

CHAPTER 3 STATEMENT OF LAW

This section shall contain the respondent's observations concerning the statement of law in the memorial and its answers thereto.

CHAPTER 4 SUBMISSIONS

This chapter deals with the orders sought or relief requested.

For example:

[Accordingly/For the reasons set out above, or for any other reason the Tribunal deems to be relevant, the [Respondent] requests the Tribunal to dismiss the submissions of the [Applicant] in total.]

[Place and Date]

[Signature of Agent]

Name of signatory
Agent for the [Respondent]

LIST OF DOCUMENTS

ANNEXES

Certified copies of documents adduced in support of the contentions in the pleading shall be annexed.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

[NAME OF CASE]

[NAME OF APPLICANT] v. [NAME OF RESPONDENT]
(Applicant) (Respondent)

**REQUEST FOR THE PRESCRIPTION OF PROVISIONAL MEASURES
UNDER ARTICLE 290, PARAGRAPH 5, OF THE
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

[DD MONTH YYYY]

REQUEST FOR PROVISIONAL MEASURES UNDER ARTICLE 290, PARAGRAPH 5, OF THE CONVENTION

CHAPTER 1 INTRODUCTION

This chapter should contain the following:

- a short presentation of the Applicant's request seeking provisional measures from the Tribunal;
- a brief statement indicating that the dispute has been submitted to an arbitral tribunal and specifying the means and date by which the dispute was submitted (notification accompanied by a statement of claim).

CHAPTER 2 STATEMENT OF FACTS

A brief statement of facts should be included. Reference may be made to the statement of facts contained in the document instituting arbitral proceedings.

CHAPTER 3 JURISDICTION

This chapter deals with the requirements under article 290, paragraph 5, of the Convention, i.e., *prima facie* jurisdiction of the arbitral tribunal which is to be constituted (see statement on legal grounds, below).

CHAPTER 4 STATEMENT ON LEGAL GROUNDS

According to article 89, paragraphs 3 and 4, of the Rules, the Request shall:

- specify the measures requested;
- specify the reasons for the measures requested;
- specify the possible consequences, if the request is not granted, for the preservation of the respective rights of the parties or the prevention of serious harm to the marine environment;
- indicate the legal grounds upon which the arbitral tribunal which is to be constituted would have jurisdiction;
- indicate the urgency of the situation.

CHAPTER 5 SUBMISSIONS

This chapter deals with the requested provisional measures to be prescribed.

For example:

Pending the constitution of the arbitral tribunal, the Applicant requests the Tribunal to prescribe the following provisional measures:

(a)

(b)

(c)

[Place and Date]

*[Signature of Head of State, Head of
Government, Minister of Foreign
Affairs, Minister of Justice/Attorney
General or diplomatic representative]*

Name of signatory

Position

ANNEXES

- A certified copy of the notification or of any other document instituting the proceedings before the arbitral tribunal must be annexed to the request (Rules, article 89, paragraph 4).
- Certified copies of any relevant documents adduced in support of the contentions contained in the request shall be annexed to the original of the request (Rules, article 63, paragraph 1).

* If the signatory is not a Head of State, Head of Government, Minister of Foreign Affairs, Minister of Justice/Attorney General or diplomatic representative, the signature must be authenticated by one of the latter or by any other competent governmental authority: see the model form contained in annex 14.

Annex 11**Authorization to submit an application on behalf of a flag State
under article 292 of the Convention**

[Place and Date]

[To be addressed to the Registrar]

Sir,

I have the honour to inform you that *[Mr .../ Ms ...]* of [...] nationality, passport number [...], has been authorized to make an application on behalf of *[name of flag State]* before the International Tribunal for the Law of the Sea under article 292 of the United Nations Convention on the Law of the Sea against *[Respondent]* in relation to the detention of the vessel *[name of vessel]* flying the flag of *[name of flag State]*.

*[Signature of Head of State, Head of
Government, Minister of Foreign
Affairs or Minister of Justice/
Attorney General]*

Name of signatory
Position

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

[NAME OF CASE]

[NAME OF APPLICANT] v. [NAME OF RESPONDENT]
(Applicant) (Respondent)

**APPLICATION FOR THE PROMPT RELEASE OF A VESSEL
[AND ITS CREW]**

[DD MONTH YYYY]

APPLICATION UNDER ARTICLE 292 OF THE CONVENTION

CHAPTER 1 INTRODUCTION

This chapter should contain:

- a short presentation of the Applicant's request and the orders sought from the Tribunal;
- if the application is submitted on behalf of the flag State, it should also contain:
 - a reference to the authorization to act on behalf of the flag State, in accordance with article 110 of the Rules; and
 - a certification indicating that a copy of the application and all supporting documentation has been delivered to the flag State (see article 110, paragraph 3, of the Rules).
- It should further indicate whether the Applicant wishes to request that the application be dealt with by the Chamber of Summary Procedure, pursuant to article 112, paragraph 2, of the Rules.

This chapter should also state the name of the agent for the Applicant:

Pursuant to article 56, paragraph 2, of the Rules, [*Mr ... / Ms ...*] has been appointed by [*the Applicant*] as its Agent for the purpose of all proceedings in connection with this Application. [*Mr ...'s / Ms ...'s*] contact details are as follows: [*Address, telephone number, facsimile, email address*]

The address for service to which all communications concerning the case are to be sent in accordance with article 56, paragraph 1, of the Rules is as follows: [*Address in Hamburg or Berlin*].

CHAPTER 2 STATEMENT OF FACTS

According to article 111, paragraph 2, of the Rules, the statement of facts shall:

- specify the time and place of detention of the vessel and the present location of the vessel and crew, if known;
- contain relevant information concerning the vessel and crew including, where appropriate, the name, flag and the port or place of registration of the vessel and its tonnage, cargo capacity and data relevant to the determination of its value, the name and address of the vessel owner and operator and particulars regarding its crew;

- specify the amount, nature and terms of the bond or other financial security that may have been imposed by the detaining State and the extent to which such requirements have been complied with;
- contain any further information the Applicant considers relevant to the determination of the amount of a reasonable bond or other financial security and to any other issue in the proceedings.

CHAPTER 3 JURISDICTION

According to article 54, paragraph 2, of the Rules, the application shall specify the legal grounds upon which the jurisdiction of the Tribunal is said to be based.

This chapter deals with the requirements under article 292, paragraph 1, of the Convention, i.e. the status of the parties to the dispute as States Parties to the Convention; the status of the Applicant as flag State of the vessel; and the requirement that the question of release from detention be submitted to the Tribunal after a period of 10 days from the time of detention of the vessel.

CHAPTER 4 STATEMENT ON LEGAL GROUNDS

According to article 111, paragraph 1, of the Rules, the Application shall contain the legal grounds upon which the Application is based.

This chapter deals with the allegation that the detaining State has not complied with the provisions of the Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond (see article 73 of the Convention in respect of fishery offences). The Applicant must demonstrate that its allegation is well-founded and may address the issue of what constitutes a reasonable bond or other financial security.

CHAPTER 5 SUBMISSIONS

This chapter deals with the orders sought or relief requested.

For example:

[Accordingly/For the reasons set out above, the Applicant requests the Tribunal to adjudge and declare that ...:

- (1) the Tribunal has jurisdiction ...;*
- (2) the Application is admissible ...;*
- (3) that the Respondent shall promptly release crew ...;*
- (4) the amount of the bond or other financial security shall be ...;*
etc.]

[Place and Date]

*[Signature of Head of State, Head of
Government, Minister of Foreign
Affairs, Minister of Justice/Attorney
General or diplomatic representative]*

Name of signatory*

Position

ANNEXES

Supporting documents shall be annexed to the application (see Rules, article 111, paragraph 3).

* If the signatory is not a Head of State, Head of Government, Minister of Foreign Affairs, Minister of Justice/Attorney General or diplomatic representative, the signature must be authenticated by one of the latter or by any other competent governmental authority: see the model form contained in annex 14.

Notification of the Appointment of an Agent

[Place and Date]

[To be addressed to the Registrar]

Sir,

Pursuant to article 56, paragraph [...], of the Rules of the Tribunal, the Government of [...] hereby appoints *[Mr ... / Ms ...]* as Agent for *[State]* in the Case concerning [...] before the International Tribunal for the Law of the Sea.

[Mr ...'s / Ms ...'s] contact details are as follows: *[Address, telephone number, facsimile, email]*

The address for service to which all communications concerning the case are to be sent in accordance with article 56, paragraph 1, of the Rules is as follows: *[Address in Hamburg or Berlin]*.

Yours sincerely,

*[Signature of Head of State, Head of
Government, Minister of Foreign
Affairs, Minister of Justice/Attorney
General or diplomatic representative]*

Name of signatory
Position

Authentication of the Agent's signature

[Place and Date]

[To be addressed to the Registrar]

I, *[name and position of signatory]*, hereby verify that the signature appearing on page [X] of the *[Application]* submitted *[by/on behalf of]* the Government of [...] is the signature of *[name of agent]* appointed as Agent in the Case concerning [...] instituted *[by/on behalf of]* the Government of [...] against the Government of [...] before the International Tribunal for the Law of the Sea.

*[Signature of Head of State, Head of
Government, Minister of Foreign
Affairs, Minister of Justice/Attorney
General or diplomatic representative]*

Name of signatory
Position

**Notification of the appointment of an Agent
and authentication of the Agent's signature**

[Place and Date]

[To be addressed to the Registrar]

I, *[name and position of signatory]*, hereby appoint *[name and position of agent]* pursuant to article 56, paragraph [...], of the Rules as Agent for *[State]* in the Case concerning [...] instituted *[by/on behalf of]* the Government of [...] against the Government of [...] before the International Tribunal for the Law of the Sea.

I verify that the signature appearing on page *[X]* of the *[Application]* submitted *[by/on behalf]* of the Government of [...] is the signature of *[name of agent]*.

*[Signature of Head of State, Head of
Government, Minister of Foreign
Affairs, Minister of Justice/Attorney
General or diplomatic representative]*

Name of signatory
Position

[PHOTO]

The Tribunal's courtroom. Photo: Hans-Christoph Brinkschmidt