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Some Reflections on the “New Law of the Sea”

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CONTENTS

I.	Introduction.....	1052
II.	The Increase of Maritime Disputes Brought Before International Courts and Tribunals.....	1054
III.	The Relative Harmony in the International Jurisprudence.....	1057
IV.	The Importance of Jurisdictional Basis in Law of the Sea Disputes.....	1059
V.	Future Disputes in Law of the Sea.....	1061

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I. INTRODUCTION

On December 10, 1982, the United Nations Convention on the Law of the Sea (“UNCLOS” or the “Convention”) was opened for signature in Montego Bay, Jamaica.¹ The fortieth anniversary of this event gives a timely opportunity to offer some reflections on the “new law of the sea”;² in other words, the comprehensive set of rules that was the result of an unprecedented multilateral negotiation process: the Third United Nations Conference on the Law of the Sea (1973–1982).

As an introduction to this contribution, it may be noted that if, in the years following the signing of the Convention, there was a certain loss of interest in the international community for law of the sea matters, oceans-related issues have now resurfaced and are at the forefront of the attention of States, non-governmental organizations, the press, and the public at large. As an illustration, reference may be made to current issues relating to the impact of climate change on seas and oceans and sea-level rise. Recently, on October 27, 2022, in a statement delivered before the United Nations General Assembly on the occasion of the discussion of the Report of the International Court of Justice (ICJ), the Permanent Representative of Vanuatu, speaking on behalf of a group of States, expressed the intention to bring “a draft resolution to the General Assembly requesting an Advisory Opinion from the [ICJ] on climate change as it specifically affects small island developing States and other developing countries particularly exposed to the adverse effects of climate change.”³ Likewise, the exploitation of the mineral resources of the deep seabed, beyond the limits of national jurisdiction, is gradually becoming a reality. This is particularly so following Nauru’s notification to the Council of the International Seabed Authority on June 25, 2021, that an entity it sponsors intends to apply for approval of a plan of work for exploration. Pursuant to Section 1, paragraph 15, of the Agreement Relating

1. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

2. On the expression, “new law of the sea,” see *A HANDBOOK ON THE NEW LAW OF THE SEA* (René Jean Dupuy & Daniel Vignes eds., 1991).

3. Statement by Ambassador Odo Tevi on Behalf of a Core Group of States (Antigua & Barbuda, Bangladesh, Costa Rica, Liechtenstein, Federated States of Micronesia, Morocco, Mozambique, New Zealand, Portugal, Samoa, Sierra Leone, Singapore, Uganda, Vanuatu, and Vietnam) on the ICJ Advisory Opinion on Climate Change (Oct. 27, 2022), https://estatemts.unmeetings.org/estatemts/10.0010/20221027/YrX3Fb90pYfM/UelRxxvIkjhbM_en.pdf.

to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, this triggered a time-limit of two years during which the Council has to complete the adoption of the rules, regulations, and procedures necessary to facilitate the approval of plans of work for exploitation in the international seabed area.⁴ At the same time, the prospect of future deep-seabed mining activities is raising concerns among some members of the international community who fear that such activities could cause further damage to a marine environment already under stress.⁵

The intergovernmental negotiations on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction that have been taking place at the UN for the past four years are further proof of the renewed interest for the law of the sea.⁶ In this context, it is important to recall that the Convention, although adopted forty years ago, contains principles and rules that are still relevant as regards the protection of the marine environment. Reference may be made, *inter alia*, to the definition of marine pollution in Article 1.1(4), the comprehensive set of rules dealing with fishing activities in the exclusive economic zone (EEZ), the obligation of States “to protect and preserve the marine environment” in Article 192, the obligation of States to take measures to prevent, reduce, and control all sources of pollution of the marine environment (including land-based pollution, pollution from or through the atmosphere or by dumping, pollution by vessels, and pollution from installations and devices at sea) as provided for in Article 194, or the duty to conduct an environmental impact assessment set out in Article 206. Part XV of the Convention should also be mentioned

4. Letter from the President of Nauru to the President of the Council of the International Seabed Authority (June 25, 2021), [https://isa.org.jm/files/files/documents/Nauru Letter-Notification.pdf](https://isa.org.jm/files/files/documents/Nauru%20Letter-Notification.pdf).

5. See, e.g., the statement of President Macron of France in his opening speech at the 2022 United Nations Climate Change Conference (COP27) on Nov. 7, 2022: “La France demande l’interdiction de toute exploitation des grands fonds marins, j’assume cette position et je la porterai dans les enceintes internationales” [“France is calling for a ban on all exploitation of the deep seabed—a position which I will relay in international fora”]. Press Release, Deep Sea Conservation Coalition, France Calls for Ban on Deep-Sea Mining at COP27 (Nov. 7, 2022), <https://www.savethehighseas.org/isa-tracker/2022/11/07/press-release-france-calls-for-ban-on-deep-sea-mining-at-cop27/>.

6. See *generally* Statement by the President of the Conference Issued After the Suspension of the Fifth Session of the Intergovernmental Conference on an International Legally Binding Instrument Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Area Beyond National Jurisdiction, U.N. Doc. A/Conf.232/2022/9 (Sept. 14, 2022).

in this regard since it contains a robust compulsory mechanism for the settlement of disputes. In an international legal order where access to a judge or an arbitrator requires the consent of both parties to the dispute, the importance of such a mechanism—which is absent in most multilateral environmental treaties—should be underlined. Indeed, under Section 2 of Part XV (“Compulsory procedures entailing binding decisions”), a State party to the Convention which alleges that another State party has breached a provision contained therein is entitled to bring such a dispute to a third-party mechanism (the ICJ, the International Tribunal for the Law of the Sea, or arbitration), subject to the limitations and exceptions contained in Articles 297 and 298, respectively.

In this contribution, which will be focused on the settlement of sea-related disputes, I will offer some remarks on four topics: the increase of maritime disputes brought before international courts and tribunals (in Part II); the relative harmony in the international jurisprudence (in Part III); the importance of jurisdictional basis in law of the sea disputes (in Part IV); and future disputes in law of the sea (in Part V).

II. THE INCREASE OF MARITIME DISPUTES BROUGHT BEFORE INTERNATIONAL COURTS AND TRIBUNALS

The years following the entry into force of the Convention on November 16, 1994, have seen a remarkable rise in the number of law of the sea disputes submitted to international courts and tribunals. The figures speak for themselves. Since the entry into force of UNCLOS in 1994, thirty-seven contentious proceedings have been instituted on the basis of the compulsory mechanism contained in Section 2 of Part XV of the Convention.⁷ In addition, during the same period, twenty-six disputes relating to law of the sea matters have been brought before international courts and tribunals on other jurisdictional bases (special agreements, optional declarations under Article 36(2)

7. The ITLOS website maintains a comprehensive list of all the tribunal’s cases. *See* ITLOS, *List of Cases*, <https://www.itlos.org/en/main/cases/list-of-cases/> (last visited Dec. 22, 2022). Out of the twenty-eight contentious cases submitted so far to ITLOS, twenty-two proceedings were instituted on the basis of the compulsory mechanism under Part XV, Section 2, of UNCLOS. The Permanent Court of Arbitration website also lists its cases, fifteen of which concern arbitration under Annex VII of the Convention. *See generally* Permanent Court of Arbitration, *Cases*, <https://pca-cpa.org/en/cases/> (last visited Dec. 22, 2022).

of the Statute of the ICJ, Article XXXI of the 1948 Pact of Bogotá, or compromissory clauses contained in treaties).⁸ In total, since 1995, sixty-three law of the sea disputes have been submitted to an international court or tribunal. By way of comparison, during a similar period preceding the entry into force of the Convention (between 1967 and 1994), nineteen law of the sea cases were brought before the ICJ and arbitral tribunals.⁹ It may then be noted that, since the entry into force of UNCLOS, maritime disputes submitted to international courts and tribunals have increased more than three-fold, and this is largely due to the mechanism for the settlement of disputes provided for in Part XV of UNCLOS.

At the same time, it should be recognized that access to international courts and tribunals in sea-related disputes is not limited to the compulsory mechanism under Part XV, Section 2, of the Convention. As was noted above, out of the sixty-seven contentious proceedings listed, thirty have been instituted on jurisdictional bases other than Part XV. Even so, the situation is more nuanced. For example, out of the twenty-eight contentious cases submitted so far to the International Tribunal for the Law of the Sea (ITLOS), twenty-two were brought on the basis of the compulsory jurisdiction of the Tribunal under Part XV of the Convention. These include proceedings for the prompt release of vessels and crews, requests for the prescription of provisional measures pending the constitution of an arbitral tribunal, and proceedings instituted pursuant to written declarations made pursuant to Article 287 of the Convention. Six other cases were brought to the Tribunal on the basis of special agreements. However, these special agreements were of a special nature. Those six cases were all instituted on the basis of agreements between the parties concerned to transfer to the Tribunal disputes that were originally instituted unilaterally before an arbitral tribunal pursuant to Annex VII of the Convention. The distinction between a special agreement *stricto sensu* and a transfer agreement has practical consequences since a transfer agreement in principle would not affect the scope of the dispute originally submitted to arbitration within the limits of the compulsory jurisdiction defined in Part XV.

8. See generally ITLOS, *List of Cases*, <https://www.itlos.org/en/main/cases/list-of-cases/> (last visited Dec. 22, 2022); Permanent Court of Arbitration, *Cases*, *supra* note 7; ICJ, *List of All Cases*, <https://www.icj-cij.org/en/list-of-all-cases> (last visited Dec. 22, 2022). These contentious proceedings include six cases before ITLOS, sixteen cases before ICJ, and four arbitral proceedings.

9. See generally sources cited *supra* note 8.

Turning now to arbitration, we may observe that it is primarily the compulsory jurisdiction, conferred by Annex VII of the Convention, that is responsible for its success in law of the sea matters. Besides arbitral proceedings based on Annex VII, a limited number of arbitrations have relied on special agreements or compromissory clauses contained in treaties.

As regards the ICJ, it is interesting to note that none of the law of the sea disputes submitted to the ICJ have used the Convention as a basis of jurisdiction. Where States submitted law of the sea disputes to the Court, they resorted to special agreements, declarations, and compromissory clauses contained in treaties. This is so although the ICJ is one of the means listed in Article 287 of the Convention that may be chosen for the settlement of disputes under UNCLOS. In practice, it may be noted that twenty-nine States parties to the Convention made declarations under Article 287 of UNCLOS by which they selected the Court as a forum to settle disputes relating to the Convention vis-à-vis any other State party having made a similar declaration.¹⁰

It may also be useful to briefly mention that, under the Convention, the settlement of law of the sea disputes is not limited to compulsory procedures leading to binding decisions. Part XV of the Convention refers to the obligation of States parties to settle disputes by peaceful means and to their right to settle disputes “by any peaceful means of their own choice.”¹¹ In this context, a specific role is given to conciliation.¹² Compulsory recourse to conciliation is thus provided for by the Convention in some instances where judicial or arbitral mechanisms are not available because of the limitations or exceptions under Articles 297 and 298.¹³ The conciliation procedure relating to the Timor Sea represents a successful use of this tool to settle a law of the

10. The following States made a declaration selecting the Court pursuant to UNCLOS art. 287: Australia, Austria, Belgium, Cabo Verde, Croatia, Denmark, Ecuador, Estonia, Finland, Germany, Honduras, Hungary, Italy, Latvia, Lithuania, Mexico, Montenegro, Netherlands, Nicaragua, Norway, Oman, Portugal, Spain, Sweden, Timor-Leste, Togo, Trinidad and Tobago, and the United Kingdom. *See* U.N. Treaty Collection, Status of the U.N. Convention on the Law of the Sea (as of Dec. 15, 2022), https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en (scroll down to entry for relevant State).

11. UNCLOS, *supra* note 1, art. 280.

12. *See id.* art. 284, Annex V.

13. *See id.* arts. 297(2)(b), 297(3)(b), 298(1)(a).

sea dispute.¹⁴ Advisory opinions may also constitute a useful mechanism in dealing with issues relating to the law of the sea. Two requests for an advisory opinion have been submitted to ITLOS so far, one to the Seabed Disputes Chamber pursuant to Article 191 of the Convention and the other brought before the Tribunal on the basis of Article 21 of its Statute.¹⁵ To date, there have not been any advisory proceedings regarding law of the sea matters before the ICJ; however, this could change in the near future.

III. THE RELATIVE HARMONY IN THE INTERNATIONAL JURISPRUDENCE

When considering the decisions rendered by international courts and tribunals after the entry into force of UNCLOS, it may be observed that, as a whole, the jurisprudence is relatively harmonious. In other words, the risk of inconsistent decisions or of a fragmentation of international jurisprudence, a concern expressed after the entry into force of UNCLOS, did not materialize. It may further be observed that the different judicial bodies do not function in isolation; they are aware of the judgments given by other courts and tribunals and their decisions often refer to them. This indicates a process of cross-fertilization among the different judicial bodies.

Of course, relative harmony does not mean uniformity. Given the decentralized nature of the international judicial system, it may be expected that certain divergences will occur in some areas. Likewise, there are questions which, so far, have only been examined in the context of a single dispute and in respect of which it would be premature to conclude that there is consistency within international jurisprudence. As an illustration, reference may be made to the interpretation of the notion of *island* pursuant to Article 121 of UNCLOS, which has been developed in an award rendered by the arbitral tribunal constituted to deal with the dispute concerning the South China Sea.¹⁶

14. *See* Timor Sea Conciliation (Timor-Leste v. Austl.), Case No. 2016-10, Comm’n Report and Recommendations of May 9, 2018 (Perm. Ct. Arb.), <https://pcacases.com/web/sendAttach/2327>.

15. *See* Responsibilities and Obligations of States with Respect to Activities in the Area, Case No. 17, Advisory Opinion of Feb. 1, 2011, 2011 ITLOS Rep. 10; *see also* Request for Advisory Opinion Submitted by the Sub-Regional Fisheries Commission, Case No. 21, Advisory Opinion of Apr. 2, 2015, 2015 ITLOS Rep. 4.

16. The South China Sea Arbitration (Phil. v. China), Case No. 2-13-19, Award (Perm. Ct. Arb. 2016), <https://pca-cpa.org/en/cases/7/>.

That said, there are important matters in respect of which a great convergence may be observed among decisions issued by different judicial bodies dealing with sea-related disputes. A first example relates to the process of maritime delimitation where a similar method has been adopted by the ICJ, ITLOS, and arbitral tribunals. The so-called “three-stage approach” in maritime delimitation (consisting of (1) the drawing of a provisional equidistance line, (2) the adjustment of the line if necessary, and (3) the test of proportionality) was first implemented by the ICJ, and described in a detailed manner in its judgment relating to the *Maritime Delimitation in the Black Sea*.¹⁷ Thereafter, the three-stage approach was adopted by ITLOS in the *Bay of Bengal* case.¹⁸ More recently, in the *Maritime Delimitation in the Indian Ocean* case, the ICJ noted that this methodology, as applied by the Court and other international tribunals, “had brought predictability to the process of maritime delimitation.”¹⁹

Another matter where consistency may be observed in the jurisprudence concerns the delimitation of the continental shelf beyond two-hundred nautical miles. The ICJ and ITLOS have both adopted a cautious approach regarding the task of settling a dispute submitted to a judicial institution and the need to preserve the role of the Commission on the Limits of the Continental Shelf in the delineation of the extended continental shelf.²⁰ This does not mean, however, that there are no variations between the decisions rendered by different courts and tribunals. As an illustration, we may refer to the manner in which the notion of “grey area”²¹—resulting from the use of

17. *Maritime Delimitation in the Black Sea (Rom. v. Ukr.)*, Judgment, 2009 I.C.J. 61, ¶¶ 115–122 (Feb. 3).

18. *Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangl./Myan.)*, Case No. 16, Judgment of Mar. 14, 2012, ITLOS Rep. 2012, at 4, ¶ 240.

19. *Maritime Delimitation in the Indian Ocean (Som. v. Kenya)*, Judgment, 2021 I.C.J. 206, ¶ 128 (Oct. 12).

20. *See, e.g., Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bang./Myan.)*, Case No. 16, Judgment of Mar. 14, 2012, 2012 ITLOS Rep. 4, ¶¶ 376, 379; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Case No. 23, Judgment of Sept. 23, 2017, 2017 ITLOS Rep. 4, ¶ 493; *see also Som. v. Kenya*, *supra* note 19, ¶¶ 188–89.

21. “Such an area results when a delimitation line which is not an equidistance line reaches the outer limit of one State’s exclusive economic zone and continues beyond it in the same direction, until it reaches the outer limit of the other State’s exclusive economic zone.” *Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangl./Myan.)*, Case No. 16, Judgment of Mar. 14, 2012, 2012 ITLOS Rep. 4, ¶ 464.

an adjusted equidistance line in the delimitation of the continental shelf—was dealt with by ITLOS and the ICJ. In its judgment in the *Bay of Bengal* case, ITLOS specified the legal regime applicable to such a grey area²² while the ICJ, in its judgment in *Maritime Delimitation in the Indian Ocean*, left this question open, in light of the fact that the existence of such “grey area” was only a possibility in the absence of a recommendation of the Commission on the Limits of the Continental Shelf.²³ However, this should not be over-emphasized; the circumstances of the two cases were not similar and could explain such a different approach.

In addition to the process of “cross-fertilization” in the jurisprudence, it may be noted that the Convention itself contains provisions establishing a certain level of cooperation between the competent fora under Part XV. The competence of ITLOS to prescribe provisional measures under Article 290(5) of the Convention is an illustration of such a cooperative process between judicial and arbitral institutions. Indeed, ITLOS is entitled to deal with a request for provisional measures, pending the constitution of an Annex VII arbitral tribunal to which the merits of the case are submitted. The role of ITLOS is then, in the absence of an arbitral tribunal duly constituted, to provide parties to a dispute with access to a forum to which they may submit an urgent request to preserve their rights or to prevent a serious harm to the marine environment.²⁴

IV. THE IMPORTANCE OF JURISDICTIONAL BASIS IN LAW OF THE SEA DISPUTES

The basis of jurisdiction is an important aspect to keep in mind when considering the submission of a law of the sea dispute to an international court or tribunal. Since jurisdiction is founded on the consent of the States parties to the dispute, the choice of the jurisdictional basis will determine the scope of jurisdiction of the forum concerned.

In the context of a major multilateral treaty such as UNCLOS, this question has a particular relevance since the mechanism for the compulsory settlement of disputes set out in Part XV is not available for all disputes. It only relates to disputes concerning the interpretation or application of the Convention and is subject to limitations and exceptions. It is therefore expected that the scope of the compulsory mechanism under Part XV will be carefully

22. *Id.* ¶¶ 473–76.

23. *Som. v. Kenya*, *supra* note 19, ¶ 197.

24. *See* UNCLOS, *supra* note 1, art. 290(5).

examined by those intending to bring a case unilaterally before a forum competent pursuant to Article 287 of UNCLOS. In this context, four comments will be made.

First, Part XV of the Convention limits the competence of the respective dispute settlement bodies to “disputes concerning the interpretation or application of th[e] Convention.”²⁵ It means that, in order to institute proceedings, the applicant should invoke a breach of specific provisions of the Convention. In some instances, this may raise difficulties as this is evidenced in the *ARA Libertad* case, concerning the immunity of a warship detained in a foreign port, where the respondent alleged that ITLOS was not competent to deal with this issue since the Convention did not contain a provision dealing expressly with the immunity of warships in internal waters and ports.²⁶

Second, if the dispute submitted under Part XV relates to UNCLOS, it may nevertheless involve aspects that are not regulated by the Convention. We may for example refer to issues relating to the use of force in law enforcement activities at sea, a matter which is not addressed in the Convention. In this respect, the jurisprudence of ITLOS suggests that the Tribunal considers that, when acting under Part XV, it is entitled to deal with questions ancillary to the main dispute submitted to it under UNCLOS. As regards the law applicable to these questions, ITLOS relied in its decisions on Article 293(1) of UNCLOS, which states that “[a] court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.” Such an approach has sometimes been criticized in the legal literature on the ground that it would extend the competence of the Tribunal beyond the limits of the compulsory jurisdiction under Part XV of the Convention. In this matter, it should be kept in mind that the task of ITLOS—or any other forum acting under Part XV—is to settle a dispute concerning the interpretation or application of the Convention. It seems therefore reasonable to consider that the Tribunal’s competence extends to additional questions which are ancillary to the main dispute and which have necessarily to be dealt with in order to settle the said dispute.

Third, any forum seized pursuant to the compulsory mechanism of Part XV will have to examine whether the dispute—or part of it—is excluded from its jurisdiction by virtue of the limitations contained in Article 297, or

25. UNCLOS, *supra* note 1, art. 287(1).

26. “*ARA Libertad*” (Arg. v. Ghana), Case No. 20, Order of Dec. 15, 2012, 2012 ITLOS Rep. 332, 343.

of the exceptions referred to in Article 298 when a declaration has been made under this provision by a State party to the dispute. In this context, the characterization of a dispute as relating—entirely—to the matters excluded from the scope of compulsory jurisdiction under Articles 297 or 298 is of crucial importance. As an illustration, we may refer to the case between Mauritius and the United Kingdom where, in response to Mauritius’s claim that the creation by the UK of a marine protected area in relation to the Chagos Archipelago breached the Convention,²⁷ the UK contended that this issue related to fishery rights in the exclusive economic zone and was therefore excluded from the scope of the compulsory jurisdiction on the basis of Article 297(3)(a) of the Convention. In its award, the arbitral tribunal concluded that the marine protected area reflected “environmental concerns that extend well beyond the management of fisheries”²⁸ and therefore that the Mauritius claim could not “be excluded entirely by the exception of jurisdiction set out in Article 297(3)(a).”²⁹ This part of the dispute could thus be dealt with by the arbitral tribunal.

Fourth, in international practice, a number of law of the sea disputes contain mixed questions; in other words, questions that do not exclusively concern matters regulated by the Convention, such as sovereignty over an island or a land territory. There is some uncertainty as to the possibility to use the compulsory mechanism under Part XV to settle these mixed cases. This may be one of the reasons that explain why none of the sea disputes submitted to the ICJ have so far been brought under Part XV of UNCLOS but rather under declarations under Article 36 of the Statute of the ICJ or regional agreements such as the Pact of Bogota. Indeed, under these jurisdictional bases, the competence of the Court is not limited to the scope of the compulsory jurisdiction under Part XV of UNCLOS and may include other questions that the parties wish to submit to it.

V. FUTURE DISPUTES IN LAW OF THE SEA

While we cannot predict the future of the settlement of disputes in law of the sea matters, we may, however, identify certain trends. In this respect, it seems reasonable to consider that a substantial proportion of future disputes will continue to relate to the delimitation of maritime areas. Until now, only

27. Dispute concerning the “Marine Protected Area” related to the Chagos Archipelago (Mauritius v. U.K.), Award of Mar. 18, 2015, 31 R.I.A.A. 359, ¶ 158 (Perm. Ct. Arb. 2015).

28. *Id.* ¶ 291.

29. *Id.* ¶ 304.

a few cases concerning the protection of living resources of the sea have been brought to international courts and tribunals.³⁰ However, given the growing concerns about the protection of the marine environment, it is reasonable to consider that these issues will result in new proceedings instituted under Part XV of UNCLOS. Indeed, it has already be noted that the Convention contains a number of provisions on the protection of the marine environment. Those provisions may be considered as *erga omnes* obligations protecting collective interests and any State party to the Convention could then bring a claim under Part XV for alleged breaches thereof. Furthermore, in light of the overexploitation of fish stocks and the damage to the marine environment caused by illegal, unreported, and regulated fishing activities, it could be expected that this matter will be the source of future disputes under UNCLOS.

To conclude, it may be stated that, regardless of the subject-matter of the future sea-related cases, one essential characteristic of the settlement of disputes will subsist, that is jurisdiction based on consent. At the same time, the success of UNCLOS—and the wisdom of its drafters—is to have secured, in its provisions, the consent of States parties to a compulsory mechanism for the settlement of disputes. Without such a mechanism, compliance with the obligations under the Convention could not have been ensured and the efficient character of the rules it contains would have rapidly vanished. It is to be hoped that the new treaty that will be concluded at the end of the marine biodiversity beyond national jurisdiction (BBNJ) negotiation process will follow a similar approach.

30. *See* Southern Bluefin Tuna Cases (N.Z. v. Japan; Austl. v. Japan), Case Nos. 3 & 4, Provisional Measures, Order of Aug. 27, 1999, 1999 ITLOS Rep. 280; Conservation and Sustainable Exploitation of Swordfish Stocks (Chile/Eur. Union), Case No. 7, Order of Dec. 16, 2009, 2008–2010 ITLOS Rep. 13; Whaling in the Antarctic (Austl. v. Japan; N.Z. intervening), Judgment, 2014 I.C.J. 226 (Mar. 31).