11. Law of the Sea Arbitration

Anna Petrig[1]

https://orcid.org/0000-0001-6921-4742

Abstract
This chapter examines arbitration under the law of the sea, with a particular focus on the compulsory dispute settlement mechanism established by the United Nations Convention on the Law of the Sea (UNCLOS). It centres on Annex VII arbitration, which operates as the default dispute settlement procedure under the Convention. After situating arbitration within the broader UNCLOS dispute settlement framework and providing key statistics on the use of Annex VII arbitration in practice, the chapter analyses the scope of jurisdiction of Annex VII tribunals. It then explores key procedural elements, including issues relating to the nomination and appointment of arbitrators. Following a discussion of the applicable law, the chapter turns to the different types of awards rendered under Annex VII and examines questions of compliance, as well as the relationship between Annex VII arbitration and the International Tribunal for the Law of the Sea. The chapter concludes by offering an outlook on the future role of Annex VII arbitration within the UNCLOS dispute settlement system.

Keywords
arbitration, international law of the sea, United Nations Convention on the Law of the Sea (UNCLOS), Annex VII, dispute settlement

1. Background and history

1.1. The ocean's importance and the potential for inter-State disputes

Covering around 70 percent of the Earth's surface,[2] the ocean is vital to humankind for a variety of reasons. It plays a crucial role in regulating the climate, notably by absorbing carbon dioxide and heat.[3] Providing a primary source of protein for billions of people, the ocean is essential for food security.[4] Maritime transport forms the backbone of global trade, with ships carrying more than 80 percent of goods traded worldwide,[5] and submarine cables, which facilitate over 99 percent of international data exchange, are the lifelines of a society heavily reliant on the Internet.[6] The ocean economy is booming and becoming increasingly

[1] Professor of International Law and Public Law at the University of Basel, Switzerland.
[2] See website of United States National Oceanic and Atmospheric Administration Ocean Exploration <https://oceanexplorer.noaa.gov/ocean-fact/explored/> accessed 3 November 2025.
[3] Intergovernmental Panel on Climate Change, 'IPCC Special Report on the Ocean and Cryosphere in a Changing Climate: Summary for Policymakers' (2019) <www.ipcc.ch/site/assets/uploads/sites/3/2022/03/01_SROCC_SPM_FINAL.pdf> accessed 3 November 2025, 5.
[4] High Level Panel of Experts on Food Security and Nutrition, 'Sustainable Fisheries and Aquaculture for Food Security and Nutrition: A Report by the High Level Panel of Experts on Food Security and Nutrition' (June 2014) <https://openknowledge.fao.org/server/api/core/bitstreams/350d9c16-fce5-4f85-9324-a41939bb3b89/content> accessed 3 November 2025.
[5] 'Shipping Data: UNCTAD Releases New Seaborne Trade Statistics' (*United Nations Conference on Trade and Development [UNCTAD]*, 23 April 2025) <https://unctad.org/news/shipping-data-unctad-releases-new-seaborne-trade-statistics> accessed 3 November 2025.
[6] See website of International Telecommunication Union <www.itu.int/digital-resilience/submarine-cables/> accessed 3 November 2025.

diverse, encompassing traditional sectors as well as emerging ones, such as the production of renewable energy.[7] Far more than an economic space, the ocean is used for many other purposes. They reach from recreation and leisure, for example, for the more than 30 million passengers embarking on a cruise every year.[8] But they also serve as a route to flee persecution and war, with thousands of migrants risking their lives in perilous sea crossings.[9]

Throughout history, the activities and uses of the sea have become increasingly diverse, numerous, and intense, with the most significant developments taking place in recent decades. Combined with the fact that the stakes and interests of States in these ocean activities and uses are high, the potential for inter-State disputes is considerable.

1.2. Law of the sea dispute settlement inside and outside the UNCLOS

Ocean uses and activities are *inter alia* governed by the (public) international law of the sea, that is, the 'rules and principles that bind States in their international relations concerning maritime matters'.[10] Another important body of law is (private) maritime law, which regulates relationships between private individuals and/or corporate bodies.[11] This chapter is concerned with the law of the sea arbitration, while maritime arbitration is addressed elsewhere in this volume.[12]

The core of the international law of the sea forms the United Nations Convention on the Law of the Sea (UNCLOS),[13] which is routinely referred to as 'A Constitution for the Ocean'.[14] Adopted in 1982 and entering into force in 1994, UNCLOS today has 171 parties, which are all States except for the European Union.[15] The treaty divides the ocean into various maritime zones and sets out the rights and obligations of various categories of States, such as coastal and flag States, in these zones. Moreover, its 320 provisions and nine Annexes govern, at least to some extent, most activities and uses of the ocean.

In addition to the UNCLOS, numerous other bilateral and multilateral treaties of a regional or global reach regulate specific ocean affairs, such as fisheries, maritime security, protection of the marine environment, biodiversity, or shipping. Despite this abundance of treaty law, rules

---

[7] 'The Ocean Economy Is Booming. But for How Long?' (*UNCTAD*, 24 February 2025) <https://unctad.org/news/ocean-economy-booming-how-long> accessed 3 November 2025.
[8] Cruise Lines International Association, '2024 Global Market Report' (2025) <https://cruising.org/resources/2024-global-source-passenger-market-report> accessed 3 November 2025.
[9] Debbie Dilger, 'World Refugee Day: The Biggest Migration Routes in the World' (*UNICEF Blog*, 20 June 2025) <www.unicef.ch/en/current/news/2025-06-20/world-refugee-day-biggest-migration-routes-world> accessed 3 November 2025.
[10] Robin Churchill, Vaughan Lowe and Amy Sander, *The Law of the Sea* (4th edn, Manchester University Press 2022) 1.
[11] Tullio Treves, 'Law of the Sea' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law*, online edition (last updated April 2011) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1186> accessed 3 November 2025 para 1.
[12] See Clanchy, this volume.
[13] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS).
[14] Tommy Koh, 'A Constitution for the Oceans' (Remarks delivered at the Third United Nations Conference on the Law of the Sea, Montego Bay, 6–11 December 1982) <www.un.org/depts/los/convention_agreements/texts/koh_english.pdf> accessed 3 November 2025.
[15] See website of United Nations <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en> accessed 3 November 2025.

derived from other sources of international law, notably customary international law, remain relevant, though they are not further examined here.

The various law of the sea treaties not only contain substantive provisions, but generally also rules on the settlement of disputes in relation to the interpretation and application of the respective treaty. A law of the sea dispute may entail claims based on rules comprised in different treaties. To borrow the words of the arbitral tribunal in *Southern Bluefin Tuna*, 'it is a commonplace international law and State practice for more than one treaty to bear upon a particular dispute'.[16] As a consequence, the dispute may potentially be subject to different dispute settlement procedures.[17] For example, the decision of the United Kingdom to authorize the construction and operation of a plant to produce mixed oxide fuel on the coast of the Irish Sea, resulted in three sets of litigation instituted by Ireland in different fora and based on different treaties.[18]

Despite this reality, this chapter will solely focus on the dispute settlement mechanism of UNCLOS, while not considering dispute settlement provisions contained in other law of the sea treaties.[19] This exclusive attention to UNCLOS is justified for two reasons. First, this widely ratified treaty constitutes the core of all law of the sea regulation; and, second, its dispute settlement provisions 'are among the most elaborate to be found in any international agreement'.[20]

1.3. Establishment of the UNCLOS dispute settlement mechanism

Indeed, a 'very unique feature' of the UNCLOS is its compulsory (or: mandatory) dispute settlement mechanism.[21] It is termed 'compulsory' because, by becoming a party to the UNCLOS, a State consents in advance to arbitration or adjudication under its Part XV. This means that no further expression of consent is required once a dispute arises, and one party can initiate judicial or arbitral proceedings unilaterally.[22] Moreover, it is impossible to opt out of the binding dispute settlement mechanism by way of reservations.[23]

This compulsory dispute settlement mechanism is a major achievement of the UNCLOS and a key difference to the four 1958 Geneva Conventions on the Law of the Sea, the predecessor treaties to the UNCLOS. Under the 1958 treaties, the mandatory dispute settlement mechanism was set out in an optional protocol, which a State party to one or more of the 1958

[16] *Southern Bluefin Tuna Case (Australia and New Zealand v Japan)* (Arbitral Tribunal Constituted under Annex VII of UNCLOS, Award on Jurisdiction and Admissibility, 4 August 2000) XXIII UNRIAA 1 para 52.
[17] Natalie Klein, 'Law of the Sea Dispute Settlement Outside of the United Nations Convention on the Law of the Sea (UNCLOS)' in Hélène Ruiz Fabri (ed), *Max Planck Encyclopedia of International Procedural Law*, online edition (last updated May 2021) <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3766.013.3766/law-mpeipro-e3766> accessed 3 November 2025 para 10.
[18] Robin Churchill, 'MOX Plant Arbitration and Cases' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law*, online edition (last updated June 2018) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e176> accessed 3 November 2025 para 1.
[19] On the subject matter excluded, see, eg, Klein, Law of the Sea Dispute Settlement Outside UNCLOS (n 17).
[20] Churchill, Lowe and Sander (n 10) 856; see also Doe, this volume.
[21] Tommy Koh, 'The Third United Nations Conference on the Law of the Sea: What Was Accomplished?' (1983) 46(2) Law and Contemporary Problems 5, 7.
[22] Lyna Maaziz, *La competence des Tribunaux arbitraux* ad hoc *de l'Annexe VII de la Convention des Nations Unies sur le droit de la mer* (LGDJ 2025) 25–26; see in detail Section 3.
[23] Natalie Klein and Jack McNally, *Compliance with Decisions of the Dispute Settlement Bodies of the UN Convention on the Law of the Sea* (Brill 2023) 9.

Geneva Conventions was free to accept, or not.[24] It attracted only 37 parties and was never applied in practice.[25] At the time, States were seemingly not ready to give compulsory dispute settlement a central role.

By contrast, during the UNCLOS negotiations that began in 1973, it became clear that a compulsory dispute settlement mechanism binding on all parties was considered necessary. This was mainly due to the goals the treaty was meant to achieve. First, the intention was to adopt a single, comprehensive treaty, rather than a set of treaties that States could selectively ratify, as had been the case with the four 1958 Geneva Conventions. Second, the treaty should be designed as an integral whole that can only be ratified in its entirety and is amenable to almost no reservations. Third, the treaty was meant to attract universal support.[26]

These objectives could only be realized by adopting provisions that strike a balance between the highly diverging interests of the States involved in the negotiations.[27] At times, agreement was only possible by resorting to 'constructive ambiguity', resulting in provisions amenable to various interpretations.[28] In addition, the UNCLOS introduced novel concepts that were previously unknown and the regulation of which has not yet been 'field-tested'.[29] The compulsory dispute settlement to which all parties to the treaty are subjected was seen as 'the cement which should hold the whole structure together'[30] and as essential for stabilizing and maintaining the 'delicate equilibrium' and thus the entire package deal.[31] It is aimed at furthering a coherent interpretation and application of the UNCLOS, incentivising compliance with it, and thus contributing to maintaining its integrity.[32]

1.4. The choice between four different fora under UNCLOS

While at some point in the UNCLOS negotiations, agreement on the need for a compulsory dispute settlement mechanism began to crystallize, views on the most suitable forum to decide disputes continued to differ considerably. Some States favoured the International Court of Justice (ICJ); other States, among them many developing States, were rather reluctant to this idea and favoured a new, specialized tribunal on the law of the sea. Yet other States, including those belonging to the Soviet bloc, opposed judicial settlement and pushed the idea of arbitration.[33]

---

[24] Shabtai Rosenne, 'Arbitrations under Annex VII of the United Nations Convention on the Law of the Sea' in Tafsir Ndiaye and Rüdiger Wolfrum (eds), *Law of the Sea, Environmental Law and Settlement of Disputes: Liber Amicorum Judge Thomas A. Mensah* (Martinus Nijhoff 2007) 989–1006, 989.
[25] Maaziz (n 22) 28–29.
[26] Alan Boyle, 'Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction' (1997) 46(1) International and Comparative Law Quarterly 37, 38.
[27] ibid.
[28] Robert Beckman and Tara Davenport, 'The EEZ Regime: Reflections After 30 Years' (Law of the Sea Institute, UC Berkeley-Korea Institute of Ocean Science and Technology Conference, Seoul, May 2012) <www.law.berkeley.edu/files/Beckman-Davenport-final.pdf> accessed 4 November 2025, 15.
[29] One such novel concept is comprised in Article 136 UNCLOS declaring the seabed beyond the limits of national jurisdiction and its resources as 'common heritage of mankind' and the related rules in Part XI of UNCLOS.
[30] Boyle (n 26) 38.
[31] Third United Nations Conference on the Law of the Sea, 'Memorandum by the President of the Conference on Document A/CONF.62/WP.9' (31 March 1976) UN Doc A/CONF.62/WP.9/Add.1 para 6.
[32] Philippe Gautier, 'Some Reflections on the "New Law of the Sea"' (2022) 99 International Law Studies 1051, 1062.
[33] Boyle (n 26) 40.

To reconcile these competing interests, a solution was sketched out that provides States with the possibility to choose between four judicial means of dispute settlement. This 'cafeteria approach'[34] is enshrined in Article 287 UNCLOS, which allows States to choose, at any time, between the International Tribunal for the Law of the Sea (ITLOS), the ICJ, an arbitral tribunal constituted in accordance with Annex VII of the UNCLOS ('Annex VII Arbitration') and a special arbitral tribunal constituted in accordance with Annex VIII of the UNCLOS for specific disputes ('Annex VIII Arbitration').

As we will see later, the forum in which a State party to UNCLOS can unilaterally institute proceedings against another State party for an alleged breach of the Convention depends on whether—and, if so, which—dispute settlement procedure the parties involved have chosen.[35] In practice, proceedings based on Part XV of the UNCLOS have been instituted in only two of the four mechanisms mentioned in Article 287 UNCLOS, namely the ITLOS and the Annex VII Arbitral Tribunals. While the ICJ has heard a number of law of the sea cases, none of these disputes have used the UNCLOS as a basis of jurisdiction.[36]

Further, as yet, no Annex VIII arbitral tribunal has been established.[37] The main difference between Annex VII and Annex VIII Arbitration is that the former has jurisdiction over all types of UNCLOS disputes, while the latter is only competent to decide—often very technical—disputes on specific subject matters, namely fisheries, marine environmental protection, marine scientific research, and navigational matters.[38] Further, in Annex VIII arbitrations, the arbitrators are experts drawn from various professional disciplines rather than lawyers, as is the case in Annex VII arbitral tribunals.[39] As this 'specialist-driven form of arbitration' and 'less legalistic mechanism'[40] has never been relied on so far, it will not be examined further in this chapter.

1.5. Key users and stakeholders of the UNCLOS dispute settlement mechanism

Annex VII arbitrations are open for States that are parties to the UNCLOS. International organizations can also become a party to the UNCLOS,[41] and Part XV on the settlement of disputes applies *mutatis mutandis* to them[42]. So far, the EU is the only international organization that has ratified the UNCLOS, and it has been a party in one Annex VII arbitration.[43]

Beyond the parties to a dispute, a range of other actors are potentially interested in the outcome of Annex VII proceedings. First, all other UNCLOS parties may have an interest in the tribunal's statements of law in order to align their future conduct. Even States not party to UNCLOS may assess decisions to understand how the treaty is likely to operate in a given

[34] ibid.
[35] See Section 3.
[36] Gautier (n 32) 1056.
[37] Richard Caddell, 'Annex VIII Article 1: Institution of Proceedings' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck, Hart and Nomos 2017) 2491–2498, 2492–2495.
[38] ibid 2496.
[39] ibid 2491–2492.
[40] ibid.
[41] UNCLOS art 1(2) read together with UNCLOS art 305(1)(f).
[42] UNCLOS Annex IX art 7(2).
[43] *The Atlanto-Scandian Herring Arbitration (Denmark in respect of the Faroe Islands v European Union)* PCA Case no 2013-30 (terminated following an agreement between parties).

context. In addition to States, non-State actors can be considered as stakeholders. For example, conservation groups have an interest in understanding how certain provisions of UNCLOS operate. The same holds true for multinational corporations investing high sums in mining, shipping, or fishing activities.[44]

1.6. Annex VII arbitration as ad hoc arbitration with close linkages with the PCA

Whether Annex VII arbitration falls into the category of *ad hoc* or institutional arbitration—the latter being understood as arbitration administered by an arbitral institution and conducted under that institution's rules—needs a differentiated response.[45] Legally speaking, Annex VII Arbitration is conceptualized as *ad hoc* arbitration.[46] Indeed, the arbitral tribunal decides upon its own procedure, unless the parties agree otherwise,[47] and UNCLOS and its Annex VII do not mention any arbitral institution. In practice, however, 14 out of 15 Annex VII Arbitrations conducted so far have been administered by the PCA,[48] except for one case that used the ICSID framework.[49] Furthermore, when adopting their procedural rules, Annex VII tribunals tend to take guidance from international arbitral practice, particularly the Rules of Procedure of the PCA, while tailoring them to the specificities of Annex VII arbitration.[50] Overall, while *ad hoc* in nature, Annex VII arbitration features close linkages with the PCA and its optional rules in practice.

2. Vital statistics and caseload trends

2.1. Law of the sea cases on the rise since the entry into force of UNCLOS

Since the entry into force of the UNCLOS in 1994, a 'remarkable rise in the number of law of the sea disputes submitted to international courts and tribunals' can be observed.[51] Between 1995 and 2022, a total of 37 contentious proceedings have been instituted based on Part XV of UNCLOS. In addition, 26 law of the sea disputes have been brought before international courts and tribunals on jurisdictional bases other than UNCLOS. This amounts to 63 cases overall, representing a marked increase compared to the equally long period between 1967 and 1994, during which only 19 law of the sea disputes were submitted to international courts and tribunals.[52] The increase is 'largely due to the mechanism for the settlement of disputes provided for in Part XV of UNCLOS'.[53]

[44] Natalie Klein, 'Stakeholders in Dispute Settlement Under the UN Convention on the Law of the Sea' in Marta Chantal Ribeiro, Fernando Loureiro Bastos and Tore Henriksen (eds), *Global Challenges and the Law of the Sea* (Springer 2020) 239–261, 241–243.
[45] On the distinction see Fullelove and Borshevskaya, this volume.
[46] Maaziz (n 22) 17; Ciarán Burke, 'Annex VII Article 1: Institution of Proceedings' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck, Hart and Nomos 2017) 2465–2467, 2465.
[47] UNCLOS Annex VII art 5; see also below Section 5.1.
[48] For a list of cases see website of Permanent Court of Arbitration (PCA) <https://pca-cpa.org/en/services/arbitration-services/unclos/> accessed 8 December 2025.
[49] *Southern Bluefin Tuna Case* (n 16) para 52.
[50] Ciarán Burke, 'Annex VII Article 5: Procedure' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck, Hart and Nomos 2017) 2475–2477, 2475–2476.
[51] Gautier (n 32) 1054.
[52] ibid 1054–1055.
[53] ibid 1055.

Although in absolute terms there was a considerable rise in law of the sea disputes, comparatively speaking, 'UNCLOS case law is relatively little'.[54] However, the size of a court's docket and judgments 'reveal only a portion of judicial bodies' effectiveness' and empirical studies suggest that the very existence of the UNCLOS dispute settlement mechanism influences the States' handling of maritime disputes.[55]

2.2. Number of Annex VII cases

Between 1994 and mid-2025, more than 20 cases were instituted under Annex VII. 15 cases proceeded as Annex VII arbitrations,[56] out of which four were terminated before a decision on jurisdiction or the merits,[57] and two are currently pending.[58] Eight cases initially instituted under Annex VII were ultimately transferred by the parties to the ITLOS through a special agreement.[59]

In terms of subject matter, Annex VII Arbitral Tribunals have jurisdiction over any dispute concerning the interpretation or application of the UNCLOS.[60] Since the drafters of the UNCLOS were '[p]rompted by the desire to settle [...] all issues relating to the law of the sea' within this treaty,[61] the Convention encompasses an extensive range of subject matters. Accordingly, disputes submitted to Annex VII arbitration may, in principle, relate to a correspondingly broad spectrum of issues.

In practice, however, the subject matters litigated in cases conducted under Annex VII are not particularly diverse and can be grouped into a few categories. The majority concern maritime boundary delimitation, the detention of vessels and crew, or the protection and management of the marine environment and its resources. Only a small number raise distinct issues, such as the immunity of State officials.

---

[54] If, eg, compared to the 'World Trade Organization, which is comparable to UNCLOS in terms of being a treaty of critical and constitutive importance with compulsory jurisdiction': Natalie Klein and Kate Parlett, *Judging the Law of the Sea: Judicial Contributions to the UN Convention on the Law of the Sea* (Oxford University Press 2022) 380.

[55] Sara McLaughlin Mitchell and Andrew Owsiak, 'Judicialization of the Sea: Bargaining in the Shadow of UNCLOS' (2021) 115(4) American Journal of International Law 579, 621.

[56] See website of Permanent Court of Arbitration (n 48).

[57] *MOX Plant Case (Ireland v United Kingdom)* PCA Case no 2002-01; *Land Reclamation by Singapore in and Around the Straits of Johor (Malaysia v Singapore)* PCA Case no 2004-05; *The ARA Libertad Arbitration (Argentina v Ghana)* PCA Case no 2013-11; *The Atlanto-Scandian Herring Arbitration* (n 43).

[58] *Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v Russia)* PCA Case no 2019-28; *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v Russia)* PCA Case no 2017-06.

[59] *The M/V 'Saiga' (No. 2) Case (Saint Vincent and the Grenadines v Guinea)* ITLOS Case no 2; *Case Concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union)* ITLOS Case no 7; *Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)* ITLOS case no 16; *The M/V 'Virginia G' Case (Panama/Guinea-Bissau)* ITLOS Case no 19; *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)* ITLOS Case no 23; *Dispute Concerning Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)* ITLOS Case no 28; *The M/T 'San Padre Pio' (No. 2) Case (Switzerland/Nigeria)* ITLOS Case no 29; *The M/T 'Heroic Idun' (No. 2) Case (Marshall Islands/Equatorial Guinea)* ITLOS Case no 32.

[60] See UNCLOS art 288(1).

[61] UNCLOS preamble.

Looking at the geography of parties to disputes, 10 out of the 30 parties involved in the Annex VII arbitration proceedings belong to the so-called 'advanced economies',[62] while 15 belong to the so-called 'emerging market and developing economies'.[63] Only one State (Ukraine) has been a claimant in more than one case, while two States have been on the respondent side more than once (Russia and the UK).[64]

The duration of proceedings varies considerably across the 15 cases. Two cases were concluded in around one year, two cases within one to two years, one case within two to three years, and three cases within three to four years. In addition, five cases went beyond the four-year mark, while two cases remain pending.[65] While this might suggest that a bulk of the Annex VII arbitral proceedings tend to be lengthy, the duration does not necessarily reflect the speed or efficiency of the tribunals themselves. Other factors, such as parallel proceedings before different fora, ongoing negotiations between the parties, or procedural complexities, may also contribute to extended timelines.

3. Arbitration agreement and consent

3.1. Advance consent by becoming a party to the UNCLOS

As has been stated by the Permanent Court of International Justice, '[i]t is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States [...] to arbitration, or to any other kind of pacific settlement.'[66] Resorting to means of dispute settlement to resolve disputes between States, including arbitration, is thus predicated on their consent.[67] Consent to arbitrate can be provided at different moments. While traditionally post-dispute submission agreement (usually termed *compromis*) prevailed in the context of settlement of inter-State disputes, pre-dispute agreement to arbitrate, as UNCLOS foresees it, has become more common in recent times.[68]

It has been mentioned that a unique feature of the UNCLOS is its compulsory dispute settlement mechanism. By becoming a party to the UNCLOS, a State (or an IO) provides its advance consent to arbitration or adjudication pursuant to Part XV of the Convention for any future disputes concerning the interpretation and application of the UNCLOS, subject to the limitations and exceptions set out in Section 3 of Part XV.[69] This implies that any party to a dispute may unilaterally institute proceedings before one of the four fora mentioned in Article

[62] Terminology used by the International Monetary Fund (IMF)'s classification for its World Economic Outlook Data for 2023, see website of IMF <www.imf.org/en/Publications/WEO/weo-database/2023/April/groups-and-aggregates> accessed 5 November 2023: Ireland, UK (2), Singapore, Denmark, Netherlands, Malta, Italy, New Zealand, Australia, Japan.
[63] Terminology used by IMF's classification for its World Economic Outlook Data for 2023, see ibid: Guyana, Suriname, Bangladesh, India (2), Russia (3), Ukraine (2), Malaysia, Barbados, Trinidad and Tobago, Mauritius, Argentina, Ghana, Philippines, China, Sao Tome and Principe.
[64] Notably, Japan appeared as a respondent against two applicant States within a single case, instead of two separate cases; see *Southern Bluefin Tuna Case* (n 16).
[65] Compiled information from the cases' overview available at website of PCA (n 48).
[66] *Status of Eastern Carelia* (Advisory Opinion) PCIJ Rep Series B No 5, 27.
[67] Alain Pellet, 'Peaceful Settlement of International Disputes' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law*, online edition (last updated August 2013) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e70?prd=EPIL> accessed 5 November 2025 para 29.
[68] See Doe, this volume.
[69] UNCLOS art 286; on limitations and exceptions see Section 4.1.

287 UNCLOS, including before Annex VII tribunals. There is no need to secure the agreement of the other party, which is rather obliged to submit to the respective procedure.[70]

3.2. Choice of forum

Which of the four procedures mentioned in Article 287 UNCLOS—the ITLOS, the ICJ, or an arbitral tribunal constituted under Annex VII or VIII—can be unilaterally seized by a party in a given case depends on whether the parties to the dispute have made a choice and, if so, which one. The choice of procedure is undertaken by means of a written declaration indicating the preferred mechanism(s),[71] which is deposited with the Secretary-General of the United Nations[72]. The declaration may be made upon signing, ratifying, or acceding to the UNCLOS or at any time thereafter.[73]

If parties to a dispute have accepted the same procedure, a dispute may only be submitted to that procedure, unless the parties agree otherwise.[74] If the parties to a dispute have not accepted the same procedure for the settlement of disputes, it may only be submitted to Annex VII arbitration, unless the parties agree otherwise.[75] If a State is party to a dispute not covered by a declaration, that State shall be deemed to have chosen Annex VII arbitration.[76]

Arbitration is thus the default (or residual) procedure under the UNCLOS dispute settlement mechanism since it applies if parties have made differing choices or no choice of procedure.[77] The latter holds true for the vast majority of UNCLOS parties; as of 2025, out of the 171 parties (170 States and the European Union), 55 States have filed an Article 287 declaration that expresses a choice of procedure.[78] Ten States have specified Annex VII arbitration as one of their chosen procedures.[79] In practice, Annex VII arbitral tribunals have served as the default dispute settlement mechanism in 13 of 15 cases, because parties have either not declared their preferred forum or have selected different fora.[80]

4. Jurisdiction

[70] Maaziz (n 22) 25–26.
[71] UNCLOS art 287(1); States do not need to choose the same forum for all matters, but can select different for different purposes: Churchill, Lowe and Sander (n 10) 870.
[72] UNCLOS art 287(8).
[73] UNCLOS art 287(1).
[74] UNCLOS art 287(4).
[75] UNCLOS art 287(5).
[76] UNCLOS art 287(3).
[77] Bernard Oxman, 'Choice of Forum for Settlement of Law of the Sea Disputes' in Helene Ruiz Fabri, Erik Franckx, Marco Benatar and Tamar Meshel (eds), *A Bridge Over Troubled Waters: Dispute Resolution in the Law of International Watercourses and the Law of the Sea* (Brill 2020) 83–104, 86–87.
[78] The numbers were compiled from the website of ITLOS <www.itlos.org/en/main/jurisdiction/declarations-of-states-parties/declarations-made-by-states-parties-under-article-287/> accessed 8 December 2025. The UN Division of Ocean Affairs and the Law of the Sea (DOALOS) also maintains a list of States that have filed declarations under Article 287 LOSC, which is dated, but longer than ITLOS' compilation. The list is longer because it includes States that have filed a declaration without indicating a chosen procedure (eg, China and France); see website of United Nations Division for Ocean Affairs and the Law of the Sea <www.un.org/depts/los/settlement_of_disputes/choice_procedure.htm> accessed 8 December 2025.
[79] These 10 States are Belarus, Canada, Egypt, Germany, Portugal, Russia, Slovenia, Timor-Leste, Tunisia, and Ukraine; see ibid.
[80] Ke Song, 'The Battle of Ideas under LOSC Dispute Settlement Procedures' (2023) 38 International Journal of Marine and Coastal Law 207, 212.

Jurisdiction 'addresses the question of whether [...] the tribunal seised of a case *can* entertain that case and render a decision that is binding on the parties'.[81] Jurisdiction, which 'is based exclusively on the consent of all parties involved'[82] thus 'refers to the power of a court [or tribunal] to adjudicate upon a dispute submitted to it'.[83]

4.1. Subject matter jurisdiction

Annex VII arbitral tribunals have subject matter jurisdiction 'over any dispute concerning the interpretation or application of this Convention', meaning the UNCLOS.[84] There must therefore not only be a dispute,[85] but it must relate to a provision of the UNCLOS. To attract the jurisdiction of an Annex VII tribunal, the claimant has therefore to identify provisions of the UNCLOS, which have allegedly been breached by the respondent.[86]

While the UNCLOS regulates many issues in relation to the ocean, there are various aspects that it does not cover. In certain cases, it may thus occur that, although a dispute is sea-related, it does not in fact involve the interpretation or application of any provision of the Convention.[87] In the *M/V Louisa Case*,[88] for example, the dispute concerned the arrest and detention by Spanish authorities of a foreign-flagged ship authorized by Spain to conduct scientific research. This dispute relates to the sea and thus at first glance to the UNCLOS. Yet, it turned out that the vessel was not arrested in relation to activities at sea, but in the context of criminal proceedings for a violation of Spanish law on the protection of underwater cultural heritage and the possession and handling of weapons of war. Since the ITLOS could not establish a link between the facts of the case and the provision of the UNCLOS, it decided that it had no subject-matter jurisdiction.[89]

It may also be that a dispute submitted to an Annex VII tribunal relates to the UNCLOS, but in addition involves an aspect not regulated by the Convention. While not uncontested, the view is held that it is reasonable to extend the tribunals' subject-matter jurisdiction to questions 'ancillary to the main dispute and which have necessarily to be dealt with in order to settle the said dispute'.[90] Thus, for example, the ITLOS considered itself competent to deal with the permissible use of force in law enforcement activities at sea, even though the UNCLOS does not regulate this issue, as it was an ancillary question to the main dispute attracting the jurisdiction of the tribunal.[91]

---

[81] Shabtai Rosenne, 'International Courts and Tribunals, Jurisdiction and Admissibility of Inter-State Applications' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law*, online edition (last updated March 2006) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e56> accessed 5 November 2025 para 2 (emphasis in the original).
[82] ibid para 3.
[83] Chandrasekhara Rao and Philippe Gautier, *The International Tribunal for the Law of the Sea: Law, Practice and Procedure* (Edward Elgar 2018) 80.
[84] UNCLOS art 288(1).
[85] Defined in *The Mavrommatis Palestine Concessions (Greece v Great Britain)* (Judgment) PCIJ Rep Series A No 2, 11 as 'a disagreement on a point of law or fact, a conflict of legal views or of interests'.
[86] Gautier (n 32) 1060; Rao and Gautier (n 83) 90–92.
[87] Rao and Gautier (n 83) 90; see also Section 1.2.
[88] This case was litigated before the ITLOS, but the subject matter jurisdiction is the same for Annex VII tribunals: Rao and Gautier (n 83) 79.
[89] Rao and Gautier (n 83) 90; *The M/V 'Louisa' (Saint Vincent and the Grenadines v Spain)* (Judgment) [2013] ITLOS Rep 4 para 104.
[90] Gautier (n 32) 1060.
[91] *The M/V 'Saiga' (No 2) (Saint Vincent and the Grenadines v Guinea)* (Judgment) [1999] ITLOS Rep 10.

Various law of the sea disputes are mixed disputes in that they do not exclusively concern matters regulated by the UNCLOS, but are, for example, closely intertwined with a dispute regarding territorial sovereignty.[92] In situations where territorial sovereignty over land is disputed, it may, for example, be contested which State is the 'coastal State' and thus the holder of certain rights in a given maritime area. There is some uncertainty whether and under which conditions an Annex VII tribunal is competent to resolve the question of disputed territorial sovereignty, without which it cannot solve the maritime dispute.[93]

An Annex VII tribunal must also examine whether a dispute or a part of it is excluded from its jurisdiction based on one of the (automatic) limitations governed by Article 297 UNCLOS or one of the exceptions (that are optional and must be declared by a State) regulated by Article 298 UNCLOS. The limitations serve to accommodate the wish of many States to exclude from the compulsory UNCLOS dispute settlement mechanism certain categories of disputes arising from the exercise by a coastal State of its sovereign rights or jurisdiction in the exclusive economic zone and on the continental shelves.[94] The exceptions, on their part, provide States with the option to declare that they do not accept the compulsory dispute settlement for certain categories of disputes touching upon important interests, such as security, boundaries, or aspects related to offshore resources.[95] While limiting the subject-matter jurisdiction of the UNCLOS dispute settlement mechanisms (and thus of the Annex VII tribunals), without these limitations and exclusions, it would have been difficult for some States to become a party to the UNCLOS.[96]

4.2. Personal, temporal, and geographical jurisdiction

In terms of personal jurisdiction, the dispute settlement procedures provided for in Part XV, including arbitration before tribunals constituted in accordance with Annex VII, are open to 'States Parties'.[97] The UNCLOS provides a specific meaning to the expression 'States Parties'. The term encompasses States, but also various entities different from States, most notably international organizations,[98] that can become a party to the UNCLOS.[99] The EU, which is the only IO that is so far a party to the UNCLOS, can thus be a party to proceedings before the ITLOS or arbitration.[100] The ICJ, however, is reserved for proceedings between States,[101] even when its competence is based on the UNCLOS.[102]

As regards temporal jurisdiction, a dispute can only be brought before an Annex VII arbitral tribunal after both States have become parties to the UNCLOS. Furthermore, the dispute must

[92] See, eg, *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait* (n 58).
[93] In detail, see Klein and Parlett (n 54) 103–112.
[94] In detail, see Andrew Serdy, 'Article 297: Limitations on Applicability of Section 2' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck, Hart and Nomos 2017) 1906–1918.
[95] In detail, see Andrew Serdy, 'Article 298: Optional Exceptions to Applicability of Section 2' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck, Hart and Nomos 2017) 1918–1932.
[96] Maaziz (n 22) 33–34.
[97] UNCLOS art 291(1).
[98] As defined in UNCLOS Annex IX art 1.
[99] UNCLOS art 1(2) read together with art 305(1).
[100] See above, (n 43) and related text.
[101] Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993 art 34.
[102] Boyle (n 26) 51.

have arisen after the States concerned became parties to the UNCLOS and must exist at the moment when proceedings are instituted.[103]

Since 'there are no geographic boundaries to inter-state arbitration',[104] geographical jurisdiction does not give rise to any issues for Annex VII tribunals. A specific dispute may relate to provisions of UNCLOS that only apply to a specific maritime zone; yet, this is a question of substantive law rather than jurisdiction.[105]

4.3. Challenges to jurisdiction and bifurcation

Objections to jurisdiction call into question the power of an Annex VII tribunal to deal with a given case. They may relate to subject matter jurisdiction—for example, an objection that the dispute does not pertain to the UNCLOS—but also to personal or temporal jurisdiction.[106]

Objections to jurisdiction must be distinguished from objections to admissibility. They consist of the assertion that even if the tribunal has jurisdiction and assuming the facts as presented by the applicant are correct, there are reasons why the tribunal should decline to hear the case or a specific claim. Such an objection can, for example, pertain to the non-exhaustion of domestic remedies.[107]

If there is a dispute as to whether an Annex VII arbitral tribunal has jurisdiction, Article 288(4) UNCLOS provides that 'the matter shall be settled by decision of that [...] tribunal'. The arbitral tribunal about whose jurisdiction the parties are in dispute is entitled to decide on the matter and thus has Kompetenz-Kompetenz.[108] A rule according to which the 'Arbitral Tribunal shall have the power to rule on objections to its jurisdiction'[109] has been included in this—or slightly modified form—in all Rules of Procedure adopted by Annex VII arbitral tribunals.[110] While Annex VII arbitral tribunals generally only decide upon their jurisdiction if there is disagreement between the parties as to its jurisdiction, there is some practice where Annex VII arbitral tribunal examined their jurisdiction *proprio motu* (at their own initiative).[111]

It falls within the competence of the Annex VII tribunal to decide whether objections to jurisdiction are to be addressed in conjunction with the merits or in a preliminary phase of the proceedings. In the latter case, the proceedings are divided into a preliminary objections phase and a merits phase, a process commonly referred to as 'bifurcation'. During the preliminary objections phase, the proceedings on the merits are suspended. The tribunal decides on the preliminary objection in the form of an award and will either uphold or reject the objection or determine that it does not have an exclusively preliminary character. In the latter two

[103] Maaziz (n 22), 226, 243–244.
[104] See Doe, this volume.
[105] Maaziz (n 22) 244.
[106] Rao and Gautier (n 83) 80–81.
[107] ibid 82–83.
[108] Tullio Treves, 'Article 288: Jurisdiction' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck, Hart and Nomos 2017) 1857–1863, 1862–1863; in detail, see Maaziz (n 22) 189–202.
[109] *Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v Russia)* PCA Case no 2019-28, Rules of Procedure (*Ukrainian Naval Vessels* Rules of Procedure) art 10(1).
[110] Maaziz (n 22) 196–197.
[111] Maaziz (n 22) 218–219.

situations, the tribunal will fix time limits for the merits proceedings to continue.[112] Bifurcation may enhance procedural efficiency and may prompt early settlement between the parties, for example where the tribunal finds that it lacks jurisdiction. Yet, it may also result in delays and costs, for example, it is sought by a party as a tactic to stall proceedings.[113]

5. Key procedural elements

5.1. Sources comprising procedural elements for Annex VII tribunals

The procedural elements of Annex VII arbitral tribunals are governed by the UNCLOS,[114] including its Annex VII, as well as the Rules of Procedure adopted for each proceeding.

Annex VII of UNCLOS comprises rules for all three phases of the arbitration proceedings. The first phase, the institution of the proceedings, is regulated by Article 1. The second phase, the composition of the tribunal, is addressed by Articles 2 and 3. The third phase, the actual proceedings and the rendering of the award, are governed by Articles 4 to 12.[115]

The Rule of Procedure shall be determined by the tribunal, unless the parties to the dispute agree otherwise.[116] Thereby, the 'parties are given a wide freedom to agree between themselves on variations to the prescribed scheme' in UNCLOS and its Annex VII.[117] Yet, in practice, the Rules of Procedure of Annex VII tribunals look quite similar, as new tribunals 'borrow' provisions adopted by earlier tribunals,[118] and adjustments are slight.[119] In terms of the substance of the Rules of Procedure, Annex VII tribunals 'seem to take inspiration' from the PCA Optional Rules for Arbitrating Disputes Between States[120], adjusting them to the specificities of Annex VII arbitrations.[121] Most, but not all, of the Rules of Procedure of Annex VII arbitral tribunals are publicly available.[122]

5.2. Initiation and conduct of proceedings

As mentioned earlier, one party to the dispute can unilaterally institute arbitration proceedings.[123] To do so, this party has to submit a written notification addressed to the other party, which must be accompanied by a statement of the claim and the grounds on which it is based.[124] Further, the party instituting the proceedings must appoint the first arbitrator.[125]

---

[112] See, eg, *Ukrainian Naval Vessels* Rules of Procedure art 10(4) and (7).
[113] On bifurcation in detail, see Maaziz (n 22) 202–219.
[114] See the various UNCLOS rules discussed in this chapter.
[115] Burke, Annex VII Article 1 (n 46) 2466 para 4.
[116] UNCLOS Annex VII art 5.
[117] Churchill, Lowe and Sander (n 10) 874.
[118] This is a general phenomenon in inter-State arbitrations, see Arthur Watts, 'Preparation for International Litigation' in Tafsir Ndiaye and Rüdiger Wolfrum (eds), *Law of the Sea, Environmental Law and Settlement of Disputes: Liber Amicorum Judge Thomas A. Mensah* (Martinus Nijhoff 2007) 327–340, 335.
[119] Churchill, Lowe and Sander (n 10) 860.
[120] Permanent Court of Arbitration, Optional Rules for Arbitrating Disputes between Two States (1992) <https://docs.pca-cpa.org/2016/01/Optional-Rules-for-Arbitrating-Disputes-between-Two-States_1992.pdf> accessed 8 December 2025.
[121] Burke, Annex VII Article 5 (n 50) 2475–2476.
[122] Maaziz (n 22) 197.
[123] See Section 3.1.
[124] UNCLOS Annex VII art 1.
[125] UNCLOS Annex VII art 3(b); see also Section 6.

However, a State party to a dispute can only institute proceedings unilaterally if certain conditions are met.[126] As noted earlier, the Annex VII tribunal must have jurisdiction to deal with the case.[127] In addition, certain requirements must be met prior to the institution of proceedings before an Annex VII tribunal. In particular, Article 283(1) UNCLOS requires the parties to a dispute to 'proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means', which includes Annex VII arbitration. This provision does not oblige the parties to negotiate the merits of the dispute; rather, the exchange of views serves to define the subject matter of the dispute.[128]

5.3. Seat of arbitration and place of proceedings

In inter-State arbitrations, such as Annex VII arbitrations, there is no 'seat of arbitration' understood as the 'legal construct, that establishes a link between a particular arbitration and the legal system of the seat of that arbitration' and the law of the seat governing the arbitration.[129] Annex VII arbitrations are governed by the UNCLOS, in particular its Annex VII, and the Rules of Procedure.[130]

If reference is made to the 'seat' or, more accurately, the 'place of proceedings' in the context of inter-State arbitrations, this refers to the 'physical place where oral hearings or meetings of arbitrators are held'[131]. As regards Annex VII arbitrations, the Rules of Procedure generally comprise a default rule where hearings take place (which is often, but not exclusively, The Hague[132]) and where the Arbitral Tribunal holds its meetings (which usually can be 'at any place/location'[133]).

5.4. Costs of proceedings

The costs of Annex VII proceedings entail the expenses of the arbitral tribunal and the costs of the parties. The expenses of the arbitral tribunal, including the remuneration of its members and registry costs, are borne by the parties in equal shares, unless the arbitral tribunal decides otherwise due to the particular circumstances of the case in question.[134] This rule of Annex VII is often replicated in the Rules of Procedure and complemented by a rule stipulating that the expenses shall be reasonable in amount, taking into account factors such as the complexity

[126] This follows from the words 'Subject to the provisions of Part XV' in UNCLOS Annex VII art 1.
[127] See above Section 4.
[128] Andrew Serdy, 'Article 283: Obligation to Exchange Views' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck, Hart and Nomos 2017) 1830–1838, 1830–1831.
[129] Daphna Kapeliuk, 'Seat of Arbitration' in Hélène Ruiz Fabri (ed), *Max Planck Encyclopedia of International Procedural Law*, online edition (last updated April 2023) <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e1962.013.1962/law-mpeipro-e1962> accessed 8 December 2025 para 1.
[130] Similar to International Centre for Settlement of Investment Disputes (ICSID) arbitration that is 'entirely self-contained and insulated from the legislation at the place of proceedings' and the procedure of which 'is governed exclusively by the Convention and its ancillary rules': see Christoph Schreuer, Loretta Malintoppi, August Reinisch and Anthony Sinclair, *The ICSID Convention: A Commentary* (2nd edn, Cambridge University Press 2009) 1244.
[131] Nisuke Ando, Shotaro Hamamoto and Kento Nisugi, 'Permanent Court of Arbitration (PCA)' in Anne Peters (ed), *Max Planck Encyclopedia of Public International Law*, online edition (last updated May 2023) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e71> accessed 8 December 2025 para 22.
[132] See, eg, *The Arctic Sunrise Arbitration (Netherlands v Russia)* PCA Case no 2014-02, Rules of Procedure (*Arctic Sunrise* Rules of Procedure) art 14(1), determining Vienna as the place of the arbitration proceedings.
[133] See, eg, *Arctic Sunrise* Rules of Procedure art 14(2).
[134] UNCLOS Annex VII art 7 and, eg, *Arctic Sunrise* Rules of Procedure art 31(1).

of the subject matter and the time spent by the arbitrators.[135] As regards the costs of the parties, each party bears its own costs, unless the arbitral tribunal decides otherwise.[136]

5.5. Transparency

Proceedings before Annex VII tribunals are characterized by a high degree of transparency. In the first two proceedings,[137] the parties opted for public hearings as well as the publication of the pleadings and final awards, reflecting the view that certain types of arbitral proceedings must, in order to be effective, be transparent and inclusive in nature.[138] This approach set the tone for subsequent cases, with later tribunals following suit. With only limited exceptions, almost all information relating to arbitration proceedings conducted under Annex VII is publicly available.[139] The modalities governing the disclosure of such information are set out in the respective Rules of Procedure adopted by Annex VII tribunals.[140]

6. Arbitrators

6.1. List of arbitrators and term of service

As per Article 2(1) of Annex VII, '[a] list of arbitrators shall be drawn up and maintained by the Secretary General of the United Nations.' Every State Party to the UNCLOS has the right to nominate up to four arbitrators to be included on the list, but some States did not nominate anyone or nominated fewer than four persons.[141] An arbitrator remains on the list until the nominating State withdraws the nomination.[142] Thus, unlike for other lists of arbitrators, for example the one of, the PCA,[143] the term of service is not limited to a certain number of years.

6.2. Background and requirements

Persons nominated for inclusion on the list of arbitrators must bring the necessary professional expertise, namely, be 'experienced in maritime affairs'.[144] Unlike the ITLOS Statute, which requires that its members have 'recognized competence in the field of the law of the sea',[145] Annex VII does not specify any legal qualifications for persons to be placed on the list of arbitrators. In terms of moral requirements, the person must enjoy 'the highest reputation for fairness, competence and integrity'.[146] Whether nominees meet these

[135] See, eg, *Arctic Sunrise* Rules of Procedure art 31(2).
[136] See, eg, *Arctic Sunrise* Rules of Procedure art 32.
[137] *Southern Bluefin Tuna Case* (n 16) and *MOX Plant Case* (n 57).
[138] Yves Fortier, 'Entre l'arbre et l'écorce (Between a Rock and a Hard Place): Can International Commercial Arbitration Deliver on Environmental Disputes?' in Tafsir Ndiaye and Rüdiger Wolfrum (eds), *Law of the Sea, Environmental Law and Settlement of Disputes: Liber Amicorum Judge Thomas A. Mensah* (Martinus Nijhoff 2007) 159–176, 163.
[139] See website of PCA (which administered 14 out of 15 Annex VII cases) <https://pca-cpa.org/en/services/arbitration-services/unclos/> accessed 22 December 2025; and website of ICSID <https://icsid.worldbank.org/news-and-events/news-releases/arbitral-award-southern-bluefin-tuna-case> accessed 22 December 2025.
[140] See, eg, *Arctic Sunrise* Rules of Procedure art 16 on 'Publication of Information' or *Ukrainian Naval Vessels* Rules of Procedure art 28 on 'Transparency'.
[141] See website of United Nations Division for Ocean Affairs and the Law of the Sea <www.un.org/depts/los/settlement_of_disputes/conciliators_arbitrators.htm> accessed 5 November 2025.
[142] UNCLOS Annex VII art 2(3).
[143] Ando, Hamamoto and Nisugi (n 131) para 15.
[144] UNCLOS Annex VII art 2(1).
[145] UNCLOS Annex VI art 2(1).
[146] UNCLOS Annex VII art 2(1).

requirements is a matter to be assessed entirely by the nominating States.[147] Importantly, there is no requirement that the nominated person is a national of the nominating State.[148]

6.3. Appointment

Article 3 of Annex VII—entitled 'Constitution of arbitral tribunal'—regulates how many arbitrators are appointed, by whom, and how. Unless the parties agree otherwise, the Annex VII Arbitral Tribunal consists of five members.[149] In line with this rule, 14 of the 15 tribunals were composed of five members, with the sole exception of the *Duzgit Integrity* case, which had a three-member tribunal.[150]

The party instituting the proceedings shall appoint one member. The appointment shall be included in the notification instituting the proceedings. The other party to the dispute shall, within 30 days of receipt of the notification, also appoint one member. Both members of the tribunal shall 'be chosen preferably' from the list of arbitrators and may be a national of the respective party.[151] The other three members shall be appointed by agreement between the parties, who also choose the President of the tribunal among these three members. While these three members shall also 'be chosen preferably' from the list, they must be nationals from third States, unless the parties agree otherwise.[152]

If the respondent does not nominate its arbitrator within 30 days of receipt of the notification or if the parties fail to nominate together the three members or the President of the tribunal within 60 days of receipt of the notification, the President of the ITLOS shall, upon request by one of the parties, make the necessary appointments, unless the parties agree that another person acts as appointing authority.[153] Article 3(e) of Annex VII lists various requirements for the appointment of arbitrators by the President of ITLOS.[154] The appointed members 'shall be of different nationalities' and not be in the services of, or residents or nationals of, any parties to the dispute.[155] Further, while parties are not limited in their appointments to the list of arbitrators, the ITLOS President must choose from the list.[156] Yet, practice exists where the President of the ITLOS appointed persons who were not on the list or who were only put on the list after their appointment.[157] Finally, the appointment shall be made 'in consultation with the parties'.[158]

The procedure defined in Article 3 of Annex VII, most notably the fixed time limits for each appointment and the stepping in of the ITLOS President in case of inaction of one party or disagreement between the parties, expedites the constitution of the arbitral tribunal and avoids

[147] Ciarán Burke, 'Annex VII Article 2: List of Arbitrators' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck, Hart and Nomos 2017) 2467–2470, 2469.
[148] UNCLOS Annex VII art 2(1) does not list such a requirement.
[149] UNCLOS Annex VII art 3(a).
[150] Compiled information from the cases' overview available at website of PCA (n 48).
[151] UNCLOS Annex VII art 3(b) and (c).
[152] UNCLOS Annex VII art 3(d).
[153] UNCLOS Annex VII art 3(c), (d) and (e).
[154] In detail, see Jianjun Gao, 'Appointment of Arbitrators by the President of the ITLOS Pursuant to Article 3 of Annex VII to the LOS Convention: Some Tentative Observations' (2017) 16(4) Chinese Journal of International Law 723, 740–747.
[155] UNCLOS Annex VII art 3(e).
[156] Compare the wording of UNCLOS Annex VII art 3(b) and (c) with that of art 3(e).
[157] On this practice, see Gao (n 154) 741.
[158] UNCLOS Annex VII art 3(e).

the frustration of the proceedings.[159] Out of the 15 Annex VII tribunals constituted, the ITLOS President has appointed members to nine tribunals. Additionally, in the ongoing *Coastal State Rights in the Black Sea* arbitration between Ukraine and Russia, the ITLOS Vice-President made the appointments, as the President at the time was a national of one of the parties.

6.3. Replacement and disqualification

Under the Rules of Procedure of an Annex VII tribunal, a party may challenge the appointment of an arbitrator. A common ground for such a challenge is the existence of justifiable doubts as to the arbitrator's impartiality or independence.[160] An arbitrator may also withdraw from the proceedings on its own account if a conflict of interest arises after appointment.[161] In the event of a successful challenge or withdrawal,[162] as well as in the case of the death of a sitting arbitrator, a replacement arbitrator must be appointed[163].

6.4. Diversity

In terms of gender diversity, the figures are telling. Out of the 80 arbitrator appointments made for Annex VII tribunals, which includes repeat appointments, 77 were male. Of the three female arbitrator appointments, two (Mossop and Brown[164]) were appointed by the then ITLOS President, and one (Kelly) was appointed by a party to the dispute.[165]

From the viewpoint of repeat appointments, the 80 arbitrator appointments actually involve only 48 individuals. One arbitrator was appointed six times, another five times, and a third four times. Four arbitrators received three appointments each, while twelve others were appointed twice. The remaining 29 arbitrators were appointed only once, indicating a relatively small pool of individuals receiving repeat nominations in Annex VII tribunals. In addition, within the list of 48 individuals, there are 15 past or present judges of the ITLOS alongside 8 past or present judges of the ICJ.[166]

7. Applicable law

Article 293(1) UNCLOS, entitled 'applicable law', provides that all four dispute settlement mechanisms under Part XV of the UNCLOS, including Annex VII tribunals, 'shall apply this Convention [the UNCLOS] and other rules of international law not incompatible with this Convention'. Where the parties so agree, the tribunal may decide a case *ex aequo et bono* pursuant to Article 293(2) UNCLOS. The Rules of Procedure adopted by individual Annex VII tribunals generally contain a provision that essentially restates the 'applicable law' clause of UNCLOS.[167]

---

[159] Ciarán Burke, 'Annex VII Article 3: Constitution of Arbitral Tribunal' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck, Hart and Nomos 2017) 2470–2473, 2471.
[160] See, eg, *Arctic Sunrise* Rules of Procedure art 7(1).
[161] Joanna Mossop in *Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v Russia)* PCA Case no 2019-28 (Decision on Challenge, 11 April 2025) para 21.
[162] See, eg, *Arctic Sunrise* Rules of Procedure art 9(1).
[163] See, eg, *The 'Enrica Lexie' Incident (Italy v India)* PCA Case no 2015-28 (Award, 21 May 2020) para 21 (passing away of Judge Rao).
[164] Mossop was, due to a conflict of interest see (n 161), replaced by Brown.
[165] Compiled information from the cases' overview available at website of PCA (n 48).
[166] ibid; the numbers do not include Judges ad hoc.
[167] See, eg, *Arctic Sunrise* Rules of Procedure art 13.

The law applied by an Annex VII tribunal is thus not limited to the UNCLOS; rather, in deciding a dispute under the Convention, the tribunal may apply general international law as well as relevant treaties applicable between the parties to the dispute.[168] Against this background, it is important to distinguish between the applicable law, which 'is broad enough to address all issues of international law' and subject matter jurisdiction, which is confined to disputes concerning the interpretation and application of the UNCLOS.[169]

As regards the UNCLOS dispute settlement mechanism, there is no binding system of precedent. Nevertheless, as with other international courts and tribunals, ITLOS and Annex VII tribunals attach importance to predictability and stability and therefore tend to follow earlier interpretations in subsequent cases, allowing a *jurisprudence constante* to develop.[170]

When the UNCLOS entered into force, concerns were expressed that the existence of four different fora competent to decide disputes under the Convention—the ITLOS, the ICJ, and arbitral tribunals constituted under Annexes VII and VIII[171]—might lead to inconsistent decisions and to a fragmentation of international jurisprudence. Yet, these concerns did not materialize. Owing to judicial interaction between ITLOS and Annex VII tribunals, and arguably also to the fact that a significant number of arbitrators have been serving or former ITLOS judges, 'relative harmony' has emerged between the jurisprudence of ITLOS and that of Annex VII tribunals.[172]

8. Awards and enforcement

8.1. Types, requirements, and publication of awards

The Rules of Procedure generally provide that, in addition to a final award, an Annex VII tribunal may issue interim, interlocutory, or partial awards and that it 'may make separate awards on different issues at different times'.[173] Awards commonly address three aspects of a dispute—preliminary objections, the merits, and compensation—which may be dealt with either in a single award or in separate awards rendered at different stages of the proceedings.

Article 10 of Annex VII sets out the requirements that an award rendered by a tribunal must fulfil. First, the award 'shall be confined to the subject-matter of the dispute'. It remains unclear whether this requirement applies to the award as a whole or only to its operative part; several Annex VII tribunals have interpreted the provision as not precluding the inclusion of *obiter dicta*.[174] As regards formal requirements, the award must be reasoned and must indicate the names of the members who have participated and the date of the award. In addition, any member of an Annex VII tribunal may append a separate or dissenting opinion.[175]

[168] Rao and Gautier (n 83) 166–167.
[169] On subject matter jurisdiction see Section 4.1; on the distinction between applicable law and jurisdiction, see Klein and Parlett (n 54) 138–147.
[170] Klein and Parlett (n 54) 32.
[171] See Section 3.2.
[172] Gautier (n 32) 1057; see also Song (n 80) on judicial interaction between the ITLOS and Annex VII tribunals.
[173] See, eg *Arctic Sunrise* Rules of Procedure art 26(3).
[174] Ciarán Burke, 'Annex VII Article 10: Award' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck, Hart and Nomos 2017) 2483–2486, 2485.
[175] UNCLOS Annex VII art 10.

Awards rendered by Annex VII tribunals are public and are available on the website of the institution that administered the respective proceedings, which in 14 out of 15 cases has been the PCA.[176]

8.2. Finality of awards

Awards of Annex VII tribunals are final[177] and without appeal, 'unless the parties to the dispute have agreed in advance to an appellate procedure'.[178] Further, Annex VII does not foresee any set aside or annulment procedures. Nevertheless, either party may request the tribunal that rendered the award, or any other forum referred to in Article 287 UNCLOS, to resolve 'any controversy' between the parties concerning the interpretation or manner of implementation of that award.[179] In addition, the applicable Rules of Procedure generally allow either party, within a specified time limit, to request the tribunal to correct any errors in computation, clerical or typographical mistakes, or errors of a similar nature contained in the award.[180]

8.3. Compliance with awards

Pursuant to Article 296 UNCLOS, an award rendered by an Annex VII tribunal is binding upon the parties to the dispute, which are required to comply with it.[181] The UNCLOS does not, however, foresee a body tasked with supervising compliance with decisions rendered by the four fora referred to in Article 287. In this respect, the UNCLOS dispute settlement system differs from other treaties establishing international courts and tribunals. By way of comparison, Article 94(2) of the UN Charter empowers the Security Council to make recommendations or decide upon measures to give effect to judgments of the ICJ, while the Committee of Ministers of the Council of Europe supervises the execution of judgments of the European Court of Human Rights.[182] It has been argued that the mere existence of these bodies may induce compliance with the judgment.[183] This raises the question whether the absence of a comparable mechanism under the UNCLOS adversely affects compliance with awards rendered by Annex VII tribunals.[184]

9. Relationship between arbitration tribunals and domestic/international courts

In addition to informal interaction between Annex VII tribunals and the ITLOS through the process of cross-fertilization in their jurisprudence,[185] the UNCLOS 'contains provisions establishing a certain level of cooperation between the competent fora under Part XV'[186]. One illustration of such cooperation is the role of the ITLOS President as appointing authority when the parties are unable to agree on the appointment of arbitrators to an Annex VII

[176] See also Section 1.6 on the role of the PCA and Section 5.5 on transparency.
[177] UNCLOS art 296(1). On finality of awards, see Stefan Talmon, 'The South China Sea Arbitration and the Finality of "Final" Awards' (2017) 8(2) Journal of International Dispute Settlement 388.
[178] UNCLOS Annex VII art 11.
[179] UNCLOS Annex VII art 12.
[180] See, eg, *Arctic Sunrise* Rules of Procedure art 29.
[181] This is echoed by UNCLOS Annex VII art 11.
[182] Hao Duy Phan and Lan Ngoc Nguyen, 'The South China Sea Arbitration: Bindingness, Finality, and Compliance with UNCLOS Dispute Settlement Decisions' (2018) 8(1) Asian Journal of International Law 36, 44–45.
[183] Klein and McNally (n 23) 11.
[184] For a discussion of this aspect see ibid ch 8.
[185] See Section 7.
[186] Gautier (n 32) 1059.

tribunal.[187] Another is the competence of ITLOS to prescribe provisional measures pending the constitution of an Annex VII tribunal.

9.1. Provisional measures

According to Article 290(1) UNCLOS, a 'court or tribunal may prescribe any provisional measure which it considers appropriate under the circumstances to preserve the rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision'. The fact that provisional measures may be adopted not only to prevent irreparable harm to the interests of the parties pending a decision on the merits, but also to avert serious harm to the marine environment, is innovative and rather unique in international adjudication.[188]

However, the need for provisional measures may arise well before the Annex VII tribunal is constituted, a process that may take several months. In response to this potential gap, Article 290(5) UNCLOS confers competence on the ITLOS, as a standing tribunal, to deal with requests for provisional measures where proceedings have been instituted before an arbitral tribunal but the latter has not yet been constituted. In such circumstances, the ITLOS has a compulsory competence. To date, eight cases have been submitted to the ITLOS on the basis of this provision.[189] Provisional measures issued by the Tribunal are binding.[190] Subject to the conditions set out in Article 290(1)–(4) UNCLOS, once the Annex VII tribunal has been constituted, it may modify, revoke, or affirm the provisional measures, which the ITLOS previously ordered.

Several conditions must be satisfied for the ITLOS to be able to order provisional measures to preserve the parties' rights or protect the marine environment. First, the ITLOS must determine whether, *prima facie*, the relevant Annex VII tribunal would have jurisdiction over the dispute. To that end, it examines whether both parties to the dispute are States Parties to the UNCLOS, whether they have either both accepted Annex VII arbitration or made differing choices with respect to the dispute settlement forum, and whether the dispute concerns the interpretation or application of the UNCLOS.[191] In addition, drawing on the jurisprudence of the ICJ, the ITLOS has introduced the requirement that the rights for which protection is sought be plausible—a requirement that ensures that only rights capable of existing merit provisional protection.[192] Next, provisional measures aim at preserving the respective rights of the parties. The threshold for indicating them is the existence of a risk that the rights could suffer 'irreparable harm'.[193] Finally, Article 290(5) UNCLOS provides 'that the urgency of the situation' requires the adoption of provisional measures. Given that provisional measures by the ITLOS are prescribed pending the constitution of the Annex VII tribunal, urgency is assessed with regard to the period until the arbitral tribunal is constituted and able to entertain a request for provisional measures itself.[194]

9.2. Transfer of proceedings

[187] See Section 6.
[188] Churchill, Lowe and Sander (n 10) 872.
[189] See website of ITLOS <www.itlos.org/en/main/cases/list-of-cases/> accessed 22 December 2025.
[190] UNCLOS art 290(6).
[191] See Section 3.2.
[192] ibid 131.
[193] ibid.
[194] ibid 134.

That 'the relationship envisaged by UNCLOS between dispute settlement via ITLOS and via arbitration is less one of exclusivity and more one of reciprocal complementation'[195] is further reflected in the practice of transferring cases initially instituted under Annex VII to ITLOS for decision.

It is indeed not rare in practice that cases initially submitted to Annex VII arbitration under the compulsory dispute settlement mechanism of Part XV, Section 2, of UNCLOS are ultimately transferred to the ITLOS (or a chamber thereof) for decision. Such transfers occur pursuant to an agreement concluded by the parties after arbitral proceedings have been instituted.[196] To date, eight cases have been transferred to the ITLOS on this basis.[197]

The reasons why parties opt for judicial settlement rather than arbitration proceedings after the latter have already been instituted are case-specific. Yet considerations of cost reduction—the ITLOS being free[198] of charge while the costs of arbitration are not negligible[199]—may play a role.

In addition, effectiveness and speed may be relevant: whereas arbitration requires agreement on various procedural aspects and the appointment of arbitrators, this is not the case before ITLOS, which is a standing tribunal. Indeed, transfers have occurred in situations where the parties were unable to agree on the appointment of arbitrators and the President of ITLOS, acting as appointing authority,[200] entered into consultations with them. These consultations appear to bring the parties closer to ITLOS and to underscore the advantages of judicial settlement in the circumstances of a given case.

10. Outlook and trends

As observed by the former Registrar of ITLOS, while the years following the adoption of UNCLOS in 1982 were marked by a certain waning of interest within the international community in matters relating to the law of the sea, ocean-related issues have since re-emerged and now occupy a prominent place on the agenda of States, non-governmental organisations, the media, and the public at large.[201] As the interests involved and the stakes attached to ocean uses have intensified, so too has the potential for inter-State disputes. It is, of course, exceedingly difficult to predict which subject matters are likely to be litigated before Annex VII tribunals. Yet three areas may tentatively be identified in which disputes may increasingly be submitted to the UNCLOS dispute settlement system.

First, there are ever-new uses of the oceans, enabled by technological advances and driven by increasing demands for resources, with deep seabed mining and offshore energy production providing salient illustrations of this trend. Such developments may generate new conflicts of interest between States and, eventually, give rise to disputes submitted to the UNCLOS dispute settlement system, including Annex VII arbitration.

---

[195] Burke, Annex VII Article 1 (n 46) 2466.
[196] Rao and Gautier (n 83) 107. For such an agreement, see eg, *The M/T 'San Padre Pio' (No. 2) (Switzerland/Nigeria)* ITLOS Case no 29, Special Agreement and Notification (17 December 21019).
[197] For the list of cases, see n 59.
[198] See Rao and Gautier (n 83) 285–286.
[199] See Section 5.4.
[200] See Section 6.
[201] Gautier (n 32) 1052.

Second, the concerns in relation to the ocean evolve. In recent years, growing attention has been paid to the impact of climate change on the oceans and to the deterioration of the marine environment, including the overexploitation of fish stocks, inter alia, through illegal, unreported, and unregulated fishing. While these issues have thus far prompted advisory proceedings, they may equally lead to contentious cases in the future.

Third, the interpretation of UNCLOS and its interaction with other bodies of law are continuously evolving. For example, over the past decade, the concept of human rights at sea has gained increasing recognition, and the protection of individuals on board vessels has emerged as a theme in ITLOS proceedings,[202] reflecting the 'growing tendency to recognize the human realities behind disputes of states'[203]. Against this background, it is conceivable that States may in the future increasingly resort to Annex VII tribunals as a strategic means of addressing the protection of people at sea.

As noted at the outset of this chapter, a unique feature of the UNCLOS dispute settlement mechanism is its compulsory nature: by becoming a party to the Convention, a State consents in advance to arbitration or adjudication under Part XV, and reservations excluding the binding dispute settlement system are not permitted. Once a dispute arises, no further expression of consent is required, and proceedings may be instituted unilaterally by one party, leaving the other State with no option but to become a party to the proceedings.[204] Nevertheless, practice revealed that a *de facto* boycott of the proceedings is possible through non-appearance. Indeed, in *The Arctic Sunrise* Arbitration, Russia declined to appear, just as China chose not to participate in *The South China Sea* Arbitration.[205] Whether these instances are isolated or indicative of an emerging trend in UNCLOS dispute settlement remains an open question. While the non-appearance of a party does not prevent proceedings from moving forward[206] and leaves the 'outward shell' of the dispute settlement system intact, it risks washing away its 'core'.[207] In this sense, non-appearance highlights the fragility of the UNCLOS dispute settlement mechanism and demonstrates that its effectiveness cannot be taken for granted.[208]

[202] In general, see Anna Petrig and Marta Bo, 'The International Tribunal for the Law of the Sea and Human Rights' in Martin Scheinin (ed), *Human Rights Norms in 'Other' International Courts* (Cambridge University Press 2019) 353–411; for recent cases, see, eg, *The M/T 'San Padre Pio' (No. 2) (Switzerland v Nigeria)* (Memorial of Switzerland) ITLOS Case no 29 (23 June 2020) paras 6.44–6.58 and *The M/T 'Heroic Idun' (Marshall Islands v Equatorial Guinea)* (Memorial of the Marshall Islands) ITLOS Case no 32 (18 December 2023) paras 253–282.
[203] Rosalyn Higgins, 'Interim Measures for the Protection of Human Rights' (1998) 36 Columbia Journal of Transnational Law 91, 108.
[204] See Section 1.3.
[205] *The Arctic Sunrise Arbitration (Netherlands v Russia)* PCA Case no 2014-02 and *The South China Sea Arbitration (Philippines v China)* PCA Case no 2013-19.
[206] UNCLOS Annex VII art 9.
[207] Gerald Fitzmaurice, 'The Problem of the "Non-Appearing" Defendant Government' (1980) 51(1) British Yearbook of International Law 89, 115.
[208] Roland Rozemarijn, *Change in the Law of the Sea: Context, Mechanisms and Practice* (Brill 2022) 150–151.