UNIVERSITY OF OXFORD

FACULTY OF LAW 2003-2004

LAW OF THE SEA: (8) The Settlement of Disputes under the Law of the Sea Convention

Outline:

The following is an outline of possible questions for enquiry and discussion:

I. The general obligation to settle disputes by peaceful means
II. Dispute settlement under the Law of the Sea Convention
    1. Consensual settlement
    2. Compulsory settlement
III. The Scope of the compulsory dispute settlement obligation under the Convention
    1. Disputes concerning the interpretation or application of the Convention
    2. Ipso jure exceptions to the compulsory jurisdiction
    3. Optional exceptions to the compulsory jurisdiction
IV. The procedures for the compulsory settlement of disputes
    1. The freedom to choose the compulsory procedure
    2. The procedures available under the Convention
        a. The International Tribunal for the Law of the Sea
        b. The International Court of Justice
        c. Arbitral tribunals under Annex VII of the Convention
        d. Special arbitral tribunal under Annex VIII of the Convention
    3. Procedures in lieu of the procedures provided for in the Convention
V. The International Tribunal for the Law of the Sea as the prescribed procedure
    1. Disputes arising from activities in the area
    2. Emergency dispute settlement procedures
        a. Provisional Measures
        b. Prompt Release of Vessels and Crews
VI. The International Tribunal for the Law of the Sea
    1. Legal status
    2. Composition
        a. Judges
        b. Experts
    3. Organization
        a. The Tribunal as a whole
        b. Seabed Disputes Chamber
        c. Special Chambers
    4. Access to the Tribunal (locus standi)
    5. Decisions and their enforcement
VII. Problems inherent in the dispute settlement system of the Law of the Sea Convention
    1. Parallel proceedings before several courts and tribunals

2. Fragmentation of the law of the sea through a multitude of compulsory procedures

VIII. Agreements incorporating or referring to the dispute settlement provisions of the Law of the Sea Convention

Basic Reading:

(a) Treaties and Other Documents

– Optional Protocol of Signature concerning the Compulsory Settlement of Disputes Arising from the Law of the Sea Conventions, 1958 (Text: 450 *UNTS* 169)
– United Nations Convention on the Law of the Sea, 1982: Arts. 186-191, 279-299, Annex VI-VIII
– Agreement for the Implementation of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995, Arts. 27-32

– Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, 1997
– Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea, 1997
– Rules of the Tribunal (ITLOS/8), as amended on 15 March and 21 September 2001
– Resolution on the Seabed Disputes Chamber
– Resolution on the Chamber for Fisheries Disputes
– Resolution on the Chamber for Marine Environment Disputes
– Resolution on Observer Status for the International Tribunal for the Law of the Sea in the General Assembly
– Declarations of States Parties Relating to the Settlement of Disputes in Accordance with Art. 298 of the Convention (all available at http://www.itlos.org/start2_en.html)
– Declarations Relating to the Choice of Procedure under Art. 287 of the Convention (available at http://www.un.org/Depts/los/settlement_of_disputes/choice_procedure.htm)

(b) Cases

(1) International Tribunal for the Law of the Sea

M/V "Saiga" (No. 1) (Saint Vincent and the Grenadines v. Guinea), Judgment of 4 December 1997, ITLOS Rep. 1997, 16
M/V "Saiga" (No. 2) (Saint Vincent and the Grenadines v. Guinea), Order of 11 March 1998, ITLOS Rep. 1998, 24
Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999, ITLOS Rep. 1999, 280
The "Camouco" Case (Panama v. France), Prompt Release, Judgement of 7 February 2000, ITLOS Rep. 2000, 10
The "Grand Prince" Case (Belize v. France), Prompt Release, Judgement of 20 April 2001, ITLOS Rep. 2001, 17

The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Rep. 2001, 95

The "Volga" Case (Russian Federation v. Australia), Prompt Release, Judgment of 23 December 2002, available at http://www.itlos.org/start2_en.html

Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003, available at http://www.itlos.org/start2_en.html

(2) Arbitral Tribunals

(i) Arbitral Tribunals under Annex VII of the Law of the Sea Convention

Southern Bluefin Tuna Case (Australia and New Zealand v. Japan), Award of 4 August 2000 (available at http://www.worldbank.org/icsid/bluefintuna/main.htm)

The Mox Plant Case (Ireland v. United Kingdom), Order No. 4, 14 November 2003; Order No. 3, 24 June 2003 (all available at http://www.pca-cpa.org/ENGLISH/RPC/index.htm)

(ii) Arbitral Tribunals under other Conventions

Dispute Concerning Access to Information under Article 9 of the OSPAR Convention (Ireland v. United Kingdom), Award of 2 July 2003 (available at http://www.pca-cpa.org/ENGLISH/RPC/index.htm)

(c) Literature

Churchill, Robin R./Lowe, Vaughan, *The Law of the Sea* (3rd edn., Manchester: MUP, 1999), 447-462

Collier, John/Lowe, Vaughan, *The Settlement of Disputes in International Law* (Oxford: Oxford University Press, 1999), 84-95

Merrills, J.G, *International Dispute Settlement* (3rd edn., Cambridge: Cambridge University Press, 1998), 170-196

Specialist Material

Boyle, Alan A., Dispute Settlement and the Law of the Sea Convention. Problems of Fragmentation and Jurisdiction, *International and Comparative Law Quarterly* 46 (1997), 37-54

Charney, Jonathan I., The Implications of Expanding International Dispute Settlement Systems: The 1982 Convention on the Law of the Sea, *American Journal of International Law* 90 (1996), 69-75

DeLaFayette, Louise, ITLOS and the Saga of the Saiga: Peaceful Settlement of the Law of the Sea Disputes, *International Journal of Marine and Coastal Law* 15 (2000), 355-392

Oda, Shigeru, Dispute Settlement Prospects in the Law of the Sea, *International and Comparative Law Quarterly* 44 (1995), 863-872

Ørebech, Peter /Sigurjónsson, Ketill/McDorman, Ted L., The 1995 United States Straddling and Highly Migratory Fish Stocks Agreement: Management, Enforcement and Dispute Settlement, *International Journal of Marine and Coastal Law* 13 (1998), 119-141

Talmon, Stefan, ITLOS – International Tribunal for the Law of the Sea, in: Volger, Helmut (ed.), *A Concise Encyclopedia of the United Nations* (The Hague: Kluwer, 2002), 340-349

Further Reading

Eiriksson, Gudmundur, *The International Tribunal for the Law of the Sea* (The Hague: Martinus Nijhoff, 2000)

Fleischhauer, Carl-August, The Relationship Between the International Court of Justice and the Newly Created International Tribunal for the Law of the Sea in Hamburg, *Max Planck Yearbook of United Nations Law* 1 (1997), 327-333

Franckx, Erik, 'Reasonable Bond' in the Practice of the International Tribunal for the Law of the Sea, *California Western Journal of International Law* 32 (2002), 303-342

Gomes Rocha, Francisco Ozanan, *The International Tribunal for the Law of the Sea. Jurisdictional and Procedural Issues Relating to the Compliance with and Enforcement of Decisions* (Hamburg: Univ.-Publ., 2001)

Oellers-Frahm, Karin, Arbitration – A Promising Alternative to Dispute Settlement under the Law of the Sea Convention, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55 (1995), 457-478

Sohn, Louis B., A Tribunal for the Sea-Bed and the Ocean, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 32 (1972), 253-264

Case to Be Decided by the International Tribunal for the Law of the Sea:

The archipelagic State of Rima is made up of a crescent-shaped string of islands located in the South Pacific. The Government of Rima has drawn a map of the maritime boundaries of State which it has submitted to the UN Secretariat. On this map are drawn over seventy-three straight baselines that join the two outermost points of the crescent of which 3 are more than 100 nautical miles. One line, the so-called "Great Line" is 120 nautical miles long and connects the outermost island's low water mark with the low water mark of a drying rock, upon which an unmanned lighthouse is precariously perched. Between this lighthouse and the other islands is an oceanic trench, the depths of which are unknown. By drawing the "Great Line" Rima extended its additional archipelagic waters some 50 nautical miles seaward.

The State of Rima claims a territorial sea of 12 nautical miles from these baselines and an exclusive fishing zone of 150 nautical miles. Although the fishermen of Rima do not, by far, have the capacity to harvest all the total allowable catch, the Government of Rima steadfastly refuses to give other States access to the surplus of the allowable catch and to conclude agreements to that effect. On the contrary, the Government of Rima has promulgated fishing regulations making fishing and all related activities in its exclusive fishing zone without the express authorization by the Riman Ministry of Agriculture and Fishing a criminal offence. According to the Riman Criminal Code unauthorized fishing and fishing related activities in the exclusive fishing zone entails forfeiture of the vessel and the fishing and other gear used.

The "Luna" is a modern oil tanker owned by the Russel Shipping Company in the State of

Tsuba which for reasons of convenience sails under the flag of the State of Issus, where it was provisionally registered in July 2003. On 1 November 2003 the "Luna" was engaged in selling gas oil as bunker and water to fishing vessels, flying the flag of Greco, engaged in experimental fishing in the exclusive fishing zone of Rima. At 0900 hours on 1 November 2003 the "Luna", according to its log book, was at a point some 140 nautical miles off the "Great Line" when it was forcibly stopped by a Riman patrol boat which shot at the ship and crew and injured four of them before officers from the patrol boat boarded the "Luna" and took control of it. The "Luna" was brought to Dalana, the capital of Rima, where the crew were put on trial. Despite Issus immediately calling for the release of the "Luna" and posting a guarantee of US$ of 400,000 the vessel was declared forfeited by the Dalanan Criminal Court.

Both, Rima and Issus are parties to the United Nations Convention on the Law of the Sea and have made written declarations under Art. 287 choosing the International Tribunal for the Law of the Sea as the procedure for the settlement of disputes concerning the interpretation or application of the Law of the Sea Convention. On 10 November Issus instituted proceedings against Rima before the International Tribunal for the Law of the Sea asking the Tribunal to adjudge and declare that

(1) the actions of Rima violated the rights of Issus and of vessels flying her flag to enjoy freedom of navigation an/or other internationally lawful uses of the sea

(2) Rima shall immediately release the "Luna" and its crew

(3) Rima shall pay compensation

(4) Rima shall pay the costs incurred by Issus in bringing the proceedings

Hearings of the "Luna" case (Issus v. Rima) are scheduled for 2 December 2003. In their oral submissions agents for the parties are to address all possible objections to the jurisdiction of the Tribunal and to the admissibility of the case as well as the substantive claims brought by Issus.