Industrial Engineering Journal
ISSN: 0970-2555
Volume : 53, Issue 10, No.1, October : 2024

DISPUTE SETTLEMENT UNDER UNCLOS: ADVANTAGES AND DISADVANTAGES OF ITLOS, ICJ OR ARBITRATION MECHANISMS

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Introduction

The dispute settlement mechanism under UNCLOS 1982 is contained in Part XV. This Part contains three sections. Section 1 deliberates upon the obligations of states relating to voluntary dispute resolution. Section 2 contains the provisions related to the compulsory dispute settlement mechanisms. This compulsory dispute settlement mechanism results into binding decisions under UNCLOS. Section 3 provides for limitations and exceptions to the applicability of section 2. Thus once states exhaust measures under section 1, the dispute under UNCLOS has to be compulsorily settled under section 2. This compulsory settlement under section 2 is subject to the exceptions and limitations under the provisions of section 3 of the UNCLOS.

Under section 2 of the UNCLOS, the State parties have leverage to choose the forums of their choice. Article 287 prescribes four mechanisms that could be used by member states to settle their disputes. These mechanisms are as follows:

- the International Tribunal for the Law of the Sea established in accordance with Annex VI
- the International Court of Justice
- an arbitral tribunal constituted in accordance with Annex VII
- a special arbitral tribunal constituted in accordance with Annex VIII for some specific categories of disputes.[1]

State Parties can declare their choice as to their preferred ways of dispute resolution either at the time of signature, ratification or afterwards.[2] If the disputing parties could not be in agreement as to their dispute resolution forum either before or after the dispute, then such disputes will by default go to the arbitral tribunal under Annex VII.[3] Thus, arbitration under Annex VII will always be a default mechanism to settle disputes in any case of discord between the disputing parties as to the forum of dispute resolution.

The Convention does not prescribe any time limit for the new declaration under article 287. Any new declaration of the State Party will come into effect as soon as it is deposited with the Secretary General of the United Nations. However, a declaration under article 287 can be withdrawn only after the lapse of three months' notice period from the date of depositing the notice of revocation to the UN Secretary General.[4] Thus, a new declaration of State Party will come into effect immediately provided such state does not have any standing declaration. But if it already has a standing declaration and it wants to alter it or change it then such state has first to withdraw its previous declaration and issue new one. Since any such withdrawal needs three months time to come into effect, the minimum time needed to change or alter the previous declaration is three months.

A new declaration does not have any retrospective effect. It means it does not affect the proceeding that have already been started and pending at the time of new declaration of any state as to the forum of dispute resolution.[5] Thus, it is the terms of the standing declarations of the parties on the date of the

[1] Article 1, Annex. VIII. Special Arbitration, UNCLOS 1982.
[2] Article 287 (1), UNCLOS 1982
[3] Article 287 (3)&(5), UNCLOS 1982
[4] Article 287 (6), UNCLOS 1982. It is also important to note that this revocation of declaration is different from the revocation of optional declaration under Article 298 (2). Article 298 of the UNCLOS 1982 provides an optional exclusion mechanism to the State Parties. By virtue of this, a State Party may exclude some subject matters from any or all procedures of compulsory dispute settlement mechanism. To avail this option state parties also have to make separate declarations under article 298. Article 298(2) provides for the withdrawal of this declaration of optional exclusion and this withdrawal comes into effect immediately. Thus, the withdrawal of declaration as to the choices of forums takes three months time but withdrawal of declaration as to the optional exclusion comes into effect immediately.
[5] Article 287(7) of UNCLOS 1982.

invocation of the compulsory dispute settlement mechanism that determine the choice of respective forums. In this respect, the date of occurrence of dispute is not of much importance and any *posto facto* declaration by State Party will determine its choice of respective forums provided such declaration is in effect on the date of triggering of the compulsory dispute settlement mechanism under Section 2.

However, the jurisprudence developed by ITLOS and the arbitral tribunal under Annex VII clearly indicate that the dispute settlement procedures under Section 1 may be exhausted very quickly and without a great deal of interaction between the parties. ITLOS in its order for the provisional measures in *Southern Bluefin Tuna case* has concluded that "a State Party is not obliged to pursue procedures under Part XV, Section 1, of the Convention when it concludes that the possibilities of settlement have been exhausted".[6] The subsequently formed arbitral tribunal under Annex VII has also come to the similar conclusion.[7]

The ITLOS, in a similar tune has observed in the *MOX Plant case* that a "State Party is not obliged to continue with an exchange of views when it concludes the possibilities of reaching the agreement have been exhausted".[8] The similar kind of authority to the discretion of the State Party in respect of the exhaustion of the procedures under Section 1 has also been granted in the *Land Reclamation Case*. Rejecting the Singapore's argument that there is no exchange of views under article 283, the ITLOS observed that "Malaysia was not obliged to continue with an exchange of views when it concluded that this exchange could not yield a positive result".[9] It is difficult to locate the exact time at which the mechanisms under Section 1 will stand terminated. Therefore it is advisable for states to make declarations well in time. Declaration by state party under Article 287(1) does not affect its obligation to accept the jurisdiction of the Sea-Bed Disputes Chamber under Part XI, section 5.[10]

In this context, it is proper to enquire about the concerns of the states before they opt for a mechanism to settle their disputes under section 2 of the UNCLOS. It is essential to understand the basic aspirations and fears of states that caused the inclusion of the provisions for four different forums. It will help in evaluating those concerns in the current state of affairs before making any declaration. The basic purpose for providing these options is to assuage the concerns of many States in respect of some existing forums of dispute settlement.

There were mainly four groups among the negotiating states that advocated different forums for dispute resolution.[11] The first group was in support of the International Court of Justice (ICJ) as a forum for compulsory dispute settlement under UNCLOS 1982. This group gave emphasis upon the contribution of ICJ to the development of law of the sea. They were of the opinion that there should be uniformity in international maritime jurisprudence. They feared of conflicting decisions if another tribunal would be entrusted with the jurisdiction. The similar concerns were also raised by some scholars of international law.[12]

However, this advocacy for ICJ has been challenged mostly by developing countries. There fear of pro-Western bias of ICJ that was specially felt because of the 1963 judgement of the Court in Northern Cameroons case (Cameroon v. UK) and the 1966 South West Africa cases (Ethiopia v. South Africa; Liberia v. South Africa). This was the prominent reason for most of the third world states to negate

[6] Southern Bluefin Tuna Cases (New Zealand v. Japan & Australia v. Japan) Provisional Measures, ITLOS Order 27 August 1999, Paragraph 60.
[7] Southern Bluefin Tuna (New Zealand-Japan, Australia-Japan), Reports of International Awards, Volume XXIII pp. 1-57, paragraph 55, page 42.
[8] THE MOX PLANT CASE (IRELAND *v.* UNITED KINGDOM), Provisional Measures, ITLOS Order 3 December 2001, paragraph 60.
[9] Case Concerning Land Reclamation by Singapore in and around the Straits of Johar (Malayasia v. Singapore), Provisional Measures, ITLOS Order 8 October 2003, Paragraph 48.
[10] Article 287 (2), UNCLOS 1982
[11] Shabtai Rosenne and Louis B. Sohn (1989) *United Nations Convention on the Law of the Sea 1982: A Commentary*, Martinuus Nijhoff Publishers, pp. 41-42; J. G. Merrills (2005) *International Dispute Settlement*, 4th ed., Cambridge University Press, pp. 185
[12] See, Shigeru Oda (1995) "Dispute Settlement Prospect in the Law of the Sea", *The International and Comparative Law Quarterly*, 44(4), pp. 864.

ICJ as a cherished forum for compulsory settlement of disputes.[13] However, the fear of fragmentation of international law remained.[14]

The second group was in support of the new tribunal. They argued for the special tribunal dedicated exclusively to the law of the sea. This was supposed to be less rigid, more democratic and representative. They also pointed out that the ICJ is only open to states but in some law of the sea matters it would be important to allow international organisations and corporations - the task that could not be fulfilled by the International Court of Justice. In this context, it is important to note that the ITLOS statute further provides standing for the suitable entities in proceedings before it.[15]

The third group supported the arbitration that is more flexible in comparison to the standing courts and tribunals. As per them, the standing courts or tribunals were affected badly by their rigid and tardy procedures. Standing courts and tribunal do not offer the freedom to the parties to decide about the applicable procedures and they generally apply their own fixed procedures in maximum disputes. In arbitration, parties can design their own procedure to conduct arbitral proceedings in order to promptly resolve the disputes. There was another group of states that considered that most of the provisions of the UNCLOS involved many technical issues and thus advocated for the functional approach that should take care of the technical necessities involved in any dispute. These were the four basic concerns of the states at the time of the negotiation of the UNCLOS and by providing four different options, the 1982 Law of the Sea Convention ensures its wider acceptance by states.

Thus any declaration by a State Party must take care of its own interest. The assessment of pros and cons of the available options becomes necessary before any such declaration is made by a State Party. However, before going further and evaluating the probable benefits and losses of each forum, it is also pertinent to highlight that non declaration of any forum gives latitude to a State Party to negotiate with another disputing party and mutually opt for a different forum in each dispute. However, if these diplomatic means fails in any dispute, the arbitration proceeding under Annex VII will take place.

To this end, the study first discusses the arbitration under Annex VII because it will always be a default mechanism in any case of disagreement as to the respective forum by virtue of either non declaration or distinctive declarations. After this, it discusses the pros and cons of the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS). Since both these bodies are standing forums of dispute settlement, the study also compares them with respect to their procedural functioning. After this, the study discusses the special arbitration under Annex VIII in little detail and attempts to find out its distinctive features and suitability in respect of the subject matters of disputes provided therein.

I. Arbitration under Annex. VII

Arbitration proceedings in general are confidential and remain completely in the hands of the disputing parties. From appointment of the arbitrators to the decision about procedures and rules of arbitration are under the control of the disputing parties. Arbitration does not permit third party intervention without the consent of disputing parties. The following sections discuss each of these issues in little detail.

Confidentiality and Jurisprudential Ease

The arbitration proceedings are mostly remain confidential within the parties. This gives the disputing parties latitude to calibrate their arguments differently in different circumstances. This confidentiality of arbitration procedures attracts states to use it particularly in cases related to maritime boundary disputes. A state may aspire to hide its arguments in any particular dispute so as not to face any disadvantageous position in any further boundary dispute negotiation with any other state. It gives

[13] Barbara Kwiatkowska (1996) "The International Court of Justice and the Law of the Sea – Some Reflections", *The International Journal of Marine and Coastal Law*, 11(4), p. 499.

[14] See, Jonathan I Charney (1996) "The Implications of Expanding International Dispute Settlement Systems: The 1982 Convention on the Law of the Sea", *American Journal of International Law*, 90(1), pp. 69-75.

[15] Article 20(2), Annex. VI. Statute of the International Tribunal for the Law of the Sea, UNCLOS 1982.

flexibility and space to manoeuvre the efforts of the states to settle their dispute. It also provides opportunities where similar kinds of disputes can be settled using different principles with different states.

The decisions by international courts and tribunals in pure legal sense do not create any jurisprudence and any such decisions are only binding among the disputing parties and only to that particular dispute. There is no *stare decisis* principle applicable in international law. However, there is a general practice where standing international courts and tribunals have always tried to maintain the jurisprudential coherence. The jurisprudential impact of any decision pronounced by any standing court or tribunal is much bigger from its bare legal identity that restricts it only between the parties and to the particular dispute.

The ad hoc arbitral proceedings are somewhere little bit immune from this jurisprudential burden. It does not mean to say that the arbitration does not create jurisprudence or arbitration proceedings do not decide according to the existing jurisprudence. It simply means that in comparison to any standing courts or tribunals, particularly in this case ITLOS or ICJ, the arbitration under Annex VII is little bit flexible in respect of jurisprudential impacts. Moreover, arbitration proceedings give much latitude to the disputing parties to solve different component of the disputes with different considerations. Since arbitration proceedings are under the control of the parties, they may adopt different mechanisms to solve different issues in a single dispute.

Third Party Intervention

Arbitration does not allow third party intervention whereas the other dispute settlement mechanisms given under the Convention (ICJ and ITLOS) permit it. If an arbitration proceeding is going on between the disputing parties and any of them invokes some arguments then a third state can not intervene in this proceeding to get benefit from such argument without the wishes of the disputing parties.

There is no bar on the party who has either opted for arbitration or has declared no choice of forum and thus accepts default arbitration under Annex VII from intervention in any ongoing dispute settlement proceedings under Convention before ITLOS or ICJ. Thus the decision of any state to solve its dispute through arbitration under Annex VII gives such state a favour to protect its own disputes from third party intervention without compromising its chances to be intervener in any other dispute pending before ITLOS or ICJ.

Composition of the Arbitral Tribunal

The composition of the arbitral tribunal under Annex VII is not always in hands of the disputing parties. Arbitral Tribunal under Annex VII consists of five arbitrators.[16] Each disputing party appoints one member to the tribunal that may be its national and the rest three are appointed jointly by both the disputing parties.[17] These three members should not be nationals of any disputing parties and any one of these three would further become the President of the arbitral tribunal.[18]

However, in the extreme condition of discord between the disputing parties as to the appointment of these three members, the President of the ITLOS is authorised to appoint these members.[19] However, if the President of ITLOS belongs to the nationality of any disputing parties then such appointments are made by the next senior most judge of the tribunal and the sequence further goes on. Here it is possible that one party may use this process to delay the appointment of these three arbitrators and get them appointed by the President of the ITLOS or other senior most judge of the tribunal in case the President belongs to the nationality of one of the disputing parties.[20]

[16] Article 3(a), Annex. VII. However, parties may agree on less or more numbers of arbitrators by the virtue of the opening line of article 3 of Annex. VII that have the overarching clause "unless the parties otherwise agree". In the Duzgit Integrity Case of 2013, the parties (Malta and Sao Tome) have agreed to constitute an arbitral tribunal consisting of only three persons instead of usual five.

[17] Article 3 (b), (c) and (d), Annex. VII, UNCLOS 1982

[18] Article 3(d) Annex VII, UNCLOS 1982

[19] Article 3 (e), Annex VII, UNCLOS 1982

[20] Article 3(e) Annex. VII, UNCLOS 1982

It is always difficult to contemplate precisely the nature of the disputes that may emerge under the Convention. Moreover, it is also difficult to measure the attitude of the opposite disputing party and the personal whims of ITLOS President at any future juncture of time. This paves the way for probabilities when the option of the appointment of three remaining arbitrators by the President of ITLOS or next senior most judges may be exploited by opposite party with some ulterior motives. Since these three members form majority in the tribunal, it can also be argued that once the parties fail to appoint them, the constitution of the arbitral tribunal goes out of their control. This compromises the basic logic of arbitration that parties have control over the constitution of the arbitral tribunal.

India in its maritime dispute with Bangladesh witnessed such appointments of the remaining three arbitrators by the President of ITLOS.[21] Though, it is difficult to discuss academically the effect of these appointments on the subsequent award but it is beyond doubt that the constitution of any arbitral tribunal may affect the final outcome. Thus the constitution of the arbitral tribunal should be one of the basic concerns of a state when it opts this mechanism of dispute settlement.

The provisions in respect of the constitution of the arbitral tribunal are also stretchable and adjustable in case of more than two disputing parties.[22] The only condition for the constitution of arbitral tribunal in a dispute involving more than two parties is that the numbers of arbitrators appointed jointly by parties should always be one more than that of appointed individually by each disputing party.[23] The already discussed concerns in respect of the constitution of the arbitral tribunal will also affect this situation. The arbitration proceedings under Annex VII are time bound and the traditional excuses of delays are not available under this process. Parties also have latitude to call back their arbitrators and appoint new one in their places.

Economic Burden

Apart from this, the option of arbitration under Annex VII or its default invocation always put the extra economic burden on the parties. Since many countries are already paying their contribution to the ITLOS and ICJ and it seems little ambiguous to contribute to the expenses of ITLOS and ICJ and not using them as a forum for dispute resolution. Arbitration demands the constitution of tribunal and each time states have to take extra steps in the constitution of the arbitral tribunal and thus to incur additional expenses.

Thus, except the fact that arbitration remains confidential, immune from the third party intervention and facilitates the disputing parties to use it as an ad hoc measure to solve the disputes, the resolution of the disputes by the arbitral tribunal under Annex VII seems not to offer any other prominent benefit to the disputing parties. Arbitration proceedings generally do not generate legal jurisprudence and thus impact only that particular dispute. In contrast to this, the standing courts or tribunals besides deciding any particular dispute also generate jurisprudence that can be used in other cases also.

II. The International Court of Justice

The ICJ has produced the significant and almost coherent jurisprudence on the maritime issues, but it is basically a body that deals with issues in general international law. The composition of its membership does not make it a specialised body in the law of the sea. The judges of the ICJ are persons with high moral character. They must have the minimum eligibility to be appointed as the highest judicial officer in their respective countries or they should be a jurist of competence in international law. Thus, it can be said that the judges of the ICJ are appointed based on their expertise in the field of general international law, whereas in the case of the ITLOS it is expected that the judges are appointed taking into consideration their expertise in the field of the law of the sea.

[21] Robin Churchill (2011) "Dispute Settlement Under the UN Convention on the Law of the Sea: Survey for 2010", *The International Journal of Marine and Coastal Law*, 26, p. 509. See, Robin Churchill (2006) in David Freestone, Richard Barnes and David M Ong (eds.) *The Law of the Sea: Progress and Prospects*, Oxford University Press, pp. 396-97.

[22] Article 3(h) Annex. VII, UNCLOS 1982.

[23] Article 3(g) Annex. VII, UNCLOS 1982.

ICJ also consumes too much time. It is generally not possible to get prompt and effective remedy from ICJ. Delay in the process is the biggest loophole of ICJ mechanism. Moreover, ICJ seems to be a more politicised body in comparison to ITLOS. There are chances of mixing of some political considerations into the language of the court.

Jurisdictional Issues

The declaration made by states in respect of the compulsory jurisdiction of the ICJ is also a problem as to its jurisdiction in respect of the law of the sea disputes. These reservations are mostly specific to different subject matters and sometimes also include the reference of states parties. These reservations as to the jurisdiction of ICJ will remain applicable even if ICJ is to adjudicate the dispute that has been entrusted to it by virtue of the provisions of the UNCLOS. This creates the problem to the jurisdiction and there is a fear that disputes may remain unresolved. This compromises the basic purpose of the UNCLOS 1982 that aspires for the compulsory settlement of the disputes.

Provisional measures can be issued under article 290 of UNCLOS. Accordingly, ICJ or ITLOS if satisfied about its own jurisdiction in the dispute may issue provisional measures on the request of a disputing party.[24] To establish this link of jurisdiction is not easy in case of the International Court of Justice. Moreover, any provisional measures prescribed by ICJ must also be reported to the Security Council.[25]

Third Party Intervention at ICJ

The statute of ICJ provides two different kinds of intervention. First, article 62 of the ICJ statute under which a state may request for intervention if it thinks that the decision in question may affect its interest of legal nature.[26] It is on Court to decide on this request and that is why this is sometimes called as discretionary intervention. Second, article 63 of the statute under which if a construction of a convention is in question then other state parties to such convention that are not parties to the dispute at hand have right to intervene.[27] It is sometimes termed as intervention as of right. These two provisions are further supplemented by articles 81-85 of the 1978 rules of the Court.

In this case intervention under article 63 of the ICJ Statute, the construction given by ICJ will be binding on those states that have intervened in the proceedings.[28] However, the right to intervene under article 63 of the ICJ Statute is subject to the Court's scrutiny about the real motive of the intervention application i.e. whether the object of the intervention is in fact the construction of the Convention.[29] The other condition for intervention under this article is that relevant treaty should be in force with respect to the intending intervener.

As per the wording of article 62 of the ICJ Statute, the potential intervener has not to prove that the interest of legal nature exists but it merely required proving *prima facie* that such right might exists. The ICJ permitted first time the intervention under article 62 in the case of Land, Island and Maritime Frontier Dispute (El Salvador/Honduras). While permitting the Nicaragua to intervene in the proceedings, it observed that Nicaragua had shown that it had an interest of a legal nature which could have been affected by parts of the judgement of the Chamber. The Court permitted Nicaragua to intervene in the proceedings as a non party. The Court specifically mentioned that by intervention the intervening state did not become party to the dispute and hence could not claim any right of appointing *Ad hoc* judges.

In respect of jurisdictional link between the disputing the disputing parties and the intervener, the Court held that its decision on third party intervention has nothing to deal with its jurisdictional competence under article 36 to hear the case between disputing parties and the potential intervener.[30] The Court is

[24] Article 290 (1), UNCLOS 1982
[25] Article 41, ICJ Statute 1945
[26] Article 62 of the ICJ Statute 1945.
[27] Article 63 of the ICJ Statute 1945.
[28] Article 63(2), ICJ Statute 1945.
[29] Haya De La Torre Case (Colombla / Peru) ICJ Reports (1951), page 77.
[30] Case Concerning the Land, Island and Maritime Frontier Dispute ICJ Reports 1990, paragraph 96.

of the view that since the parties have accepted its statute which provides for possibility of intervention of third States, the Court has the competence to permit the intervention even if it is opposed by one or both of the parties to the dispute.
Further, the Chamber in its judgment of 11 September 1992 held that the intervening state that did not acquire the status of the party was not bound by the judgement given in the proceedings in which it had intervened.[31] This chance of disputes being politicised at ICJ has made many states to reject ICJ from their choice. The chances of political manoeuvring in ICJ and its non efficacy in giving prompt and effective remedy defer most of the developing states from declaring ICJ as a cherished forum for dispute settlement under UNCLOS.
Disputes also become very high profile at ICJ. It sometimes becomes the question of emotion and honour for the citizens of the disputing parties and it also started to affect the domestic politics. Thus many states also remain away from the ICJ mechanisms.

III. The International Tribunal for the Law of the Sea (ITLOS)

ITLOS is a special tribunal for the law of the Sea that consists of twenty one members of high moral character and recognised competence in the field of law of the sea. Thus, ITLOS a more effective mechanism in terms expertise in comparison to ICJ. ITLOS's constitution is also representative than ICJ. The members of ITLOS were elected by the secret ballot by the member states. The constitutive articles also guarantee the minimum number of members from each geographical reason.
Thus the composition of ITLOS is more democratic than the ICJ and represents the interests of State Parties in a better way. As per the provisions of the Convention, if the disputing parties may not agree upon the similar mechanism for the dispute settlement, the arbitration under Annex VII will be invoked automatically. Thus ITLOS may be the good option for state parties.
Apart from this the provisions for the special chambers of the ITLOS to decide cases also makes it more or less equivalent to arbitration proceedings though without incurring any extra burden. Article 15 of the Statute of the ITLOS states that a chamber consisting of three or more of its members can be formed on request of the parties to deal with a particular dispute.[32] These chambers may be composed of three or more of its elected members of the tribunal. The composition of these chambers will be determined by the Tribunal with the approval of the parties.[33] Thus, it may also fulfil the states' desire to get their cases decided by their own designated judges (though states would exercise this freedom only within the membership of the ITLOS). ITLOS also provides for the summary procedures for the settlement of disputes.
Moreover, by virtue of article 290 (5) of the UNCLOS, ITLOS has a compulsory jurisdiction for prescription of provisional measures in cases where constitution of arbitral tribunal is still pending and the disputing parties fail to agree on getting provisional measures from ICJ. Since ITLOS also gives standing to entities also, any provisional measures against such entities can only be prescribed by ITLOS pending the constitution of the arbitral tribunal as the may be. This is the important provision because UNCLOS apart from preserving the rights of the respective parties also authorises the prescription of the provisional measures to prevent serious harm to the marine environment.

Third Party Intervention at ITLOS

The statute of the ITLOS provides for two kinds of third party intervention. First, Article 31 of the Statute permitted the possibilities of intervention by another State party where a legal interest of intervening State may be affected by the decision of the tribunal in any ongoing case.[34] This article makes a difference with the corresponding provision of ICJ Statute in respect of the binding nature of

[31] Rudiger Wolfrum (2001) "Intervention in the Proceedings Before the International Court of Justice and the International Tribunal for the Law of the Sea" in P C Rao and Rahamatullah Khan (eds.) (2001) *The International Tribunal for the Law of the Sea: Law and Practice*, The Hague: Kluwer Law International, p. 170.
[32] Annex. VI, article 15 (1)&(2), ITLOS Statute.
[33] Ibid, article 15(2)
[34] Article 31, ITLOS Statute.

the judgement on intervening state. Accordingly, the decision of the Tribunal shall be binding upon the intervening state in respect of the matters for which it has intervened.[35] Though the decision of the tribunal is binding upon the intervening state, the intervening state does not become party to the dispute merely by virtue of its intervention. Thus the intervening state is not entitled to choose judge *ad hoc* and also can not object any agreement between the parties to discontinue the proceedings.

Secondly, article 32 of the ITLOS statute permits a State party to intervene if the interpretation or application of the UNCLOS 1982 is under question in any dispute.[36] This provision is almost similar to the corresponding provision under article 63 of the ICJ statute. However, this article speaks for the "interpretation or application" of the Convention" rather than of the "construction of a Convention" as mentioned in ICJ statute. If any other agreement or treaty refers ITLOS as dispute settlement body then all the parties to that treaty also have right to intervene in any dispute relating to the interpretation of application of that agreement or treaty.[37] This provision is also applicable where all parties to the treaty or convention concerning the subject matter covered by UNCLOS agree to submit any dispute concerning interpretation or application of that treaty or convention. If any party intervenes in the proceedings under article 32, it will be binding on such intervener.

Apart from this, ITLOS is a new specialised body of the UNCLOS. The selection of its members is governed totally by democratic processes that remain under control of each and every member states in equal capacity. In most of the cases of provisional measures, States have to argue before ITLOS. Thus, there is no way out of the ITLOS. States have to spend their energies and resources in two different forums if they do not choose ITLOS as their dispute settlement forum because of its jurisdiction in the cases of provisional measures. A State also can not intervene in the proceedings before ITLOS without being bounded by the outcome on the issue of intervention. Thus, unlike ICJ there is not any chance of intervention without any binding outcome of the judgement on the intervener.

IV. Special Arbitration under Annex VIII

The Convention also prescribes for the Special Arbitration under Annex VIII in respect of disputes related to fisheries, protection and preservation of the marine environment, marine scientific research, or navigation, including pollution from vessels and by dumping. This provision has been carved out to take care of special need of the some of the specific disputes. The arbitration tribunal under Annex VIII is composed of five arbitrators. Each party can appoint two arbitrators and the remaining one (President of the tribunal) is appointed by the consensus of the parties. If the parties fail to achieve consensus then the appointment will be made by the Secretary General of the United Nations.

The list of the arbitrators for the arbitration tribunal under Annex VIII is maintained by various specialised agencies. For example, with respect to disputes related to fisheries – the list of arbitrators is maintained by the FAO. Further, in respect of disputes related to the marine environment, marine scientific research and navigation, the list of arbitrators is maintained respectively by UNEP, Intergovernmental Oceanographic Commission and International Maritime Organisation.

It is also important to note here that though this is a specialised arbitration for the technical subject matter but the condition of the invocation of this mechanism is same as that in respect of other disputes. This specialised arbitration can only be invoked if both the parties either have declared as their choice of forums in respect of the given subject matters or have jointly agreed to it. In any case of non agreement as to the choice of forums between the parties always invoke the arbitration under Annex VII even if the dispute is about the matters that are provided for the special arbitration under Annex VIII.

Thus, it is the meeting of the declarations or the mutual agreement of the parties that invokes the proceedings of the special arbitration under Annex VIII with respect to the disputes on certain subject

[35] Article 31 (3), ITLOS Statute.
[36] Article 32 of the ITLOS Statute.
[37] Article 32(2) and article 21, ITLOS Statute.

matters and the kind of the dispute does not *ipso facto* trigger the special arbitration mechanism. The disputes mentioned for the adjudication through special arbitration are also open to be adjudged through other mechanisms of the compulsory dispute settlement.

V. Conclusion

The paper has discussed many advantages and disadvantages of various dispute settlement mechanisms available in UNCLOS 1982. The states have freedom to negotiate their own favourable mechanisms for dispute resolution with a condition that disputes should definitely be resolved under UNCLOS. Each forum has some pros and cons and the study has already discussed it in little detail. So states should remain cognizant while opting for any dispute resolution mechanisms under UNCLOS 1982. The study also finds that ITLOS is a more suitable option for dispute resolution under UNCLOS 1982.