Another weak but subsidiary source of international law is the writings of legal experts and publicists. While these opinions cannot under any circumstances create new law, their work is often used in drafting treaties and interpreting customary law.

Finally, the rapid growth of international organizations after World War II has produced a growing body of *soft law.* Some organizations, such as the United Nations (UN), create binding law through their charters, which have the legal status of multilateral treaties. For example, in signing a UN charter, states commit themselves to observe a wide range of legally binding regulations on such matters as the use of force and the resolution of disputes. International law conferences (such as the Conferences on the Law of the Seas) and, in limited cases, resolutions passed by multilateral deliberative bodies such as the United Nations General Assembly (UNGA) can create new legal norms that become accepted as common practice. For example, resolutions passed at the 1815 Congress of Vienna are widely credited with having effectively outlawed the slave trade, and the 1960 UNGA resolution declaring colonialism to be an illegitimate practice is considered to be politically if not legally binding on all states.

There is a spirited debate among legal scholars and political scientists over the degree to which international law can be considered "law" in the traditional sense. John Austin, for example, argues that because international law does not proceed from a single sovereign with coercive authority and because states are themselves sovereign (and thus not susceptible to legal sanction), international law is "positive morality" rather than legal doctrine. Herbert L. Hart, on the other hand, argues that international law is "primitive law" that stipulates obligations even if it lacks the "secondary rules" that would define a sophisticated legal system. In practice, Hart's approach tends to dominate. Both domestic courts and government officials have repeatedly shown that they consider international law to be far more than moral code. In a classic statement issued in the 1900 *Paquete Habana* case, U.S. Supreme Court justice Horace Gray argued that international law is an important component of American law. These views have been echoed by justices in England, Germany, Japan, and elsewhere.

While international law requires that states meet their international obligations, it does not stipulate the process through which states do so. Some states incorporate international law into their body of domestic law through specific legislative acts. Others rely on their executives to adhere to its provisions. The relationship between international and domestic law is a reflection of two competing doctrines, monism and dualism. Dualists view international and domestic law as separate legal systems that operate on entirely different levels. Thus, international law can be applied by domestic courts only after it has been officially incorporated into domestic law. In this case, international law would be subject to the constitutional limits that apply to all domestic law and can be superseded by legislative act. On the other hand, monists view international and domestic law as part of a single legal system. In this conception, international law is superior to domestic law and thus cannot be subject to repeal or constitutionally overruled by domestic courts or legislatures.

Bruce Cronin

See also Customary Law; Legal Positivism; Natural Law; Roman Law

References and further reading

Brierly, J. L. 1963. *The Law of Nations: An Introduction to the International Law of Peace.* New York: Oxford University Press.

Cassese, Antonio. 1986. *International Law in a Divided World.* Oxford: Clarendon Press.

Charlesworth, Hilary, Richard Falk, and Burns Weston. 1997. *International Law and World Order.* St. Paul, MN: West Group.

Franck, Thomas. 1990. *The Power of Legitimacy among Nations.* New York: Oxford University Press.

Henkin, Louis. 1979. *How Nations Behave: Law and Foreign Policy.* New York: Columbia University Press.

Ku, Charlotte, and Paul Diehl, eds. 1998. *International Law: Classic and Contemporary Readings.* Boulder, CO: Lynne Rienner Publishers.

Von Glahn, Gerhard. 1996. *Law among Nations: An Introduction to Public International Law.* Boston: Allyn and Bacon.

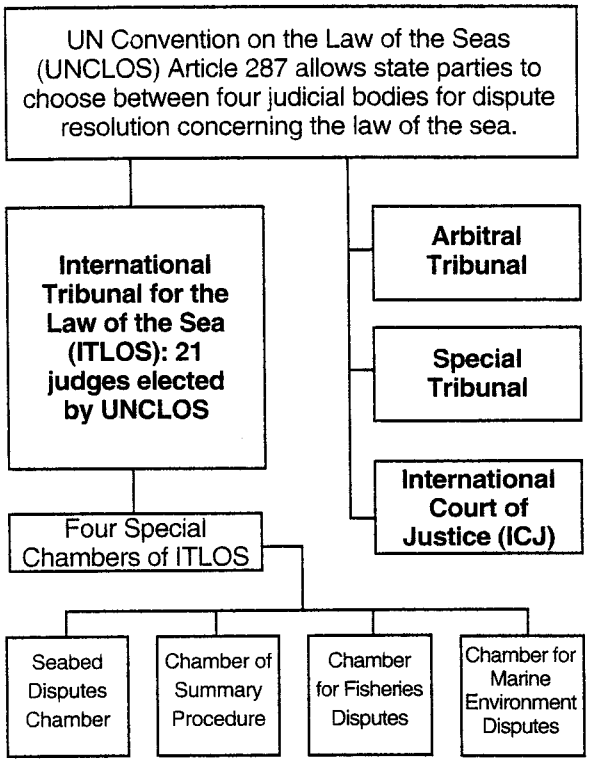
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

MISSION

The International Tribunal for the Law of the Sea (ITLOS) was established in Hamburg, Germany, in October 1996. The ITLOS represents an important component of the UN Convention on the Law of the Seas (UNCLOS) compulsory procedures for dispute resolution among states parties. UNCLOS Article 287 allows states parties to choose between four forums for dispute resolution: the ITLOS, the International Court of Justice (ICJ), an arbitral tribunal, or a special technical arbitral tribunal (see figure). The jurisdiction of the ITLOS over an interstate dispute depends on the consent of the parties involved, which is expressed through the acceptance and ratification of UNCLOS.

Part of the system for the peaceful settlement of disputes envisioned in the Charter of the United Nations, the ITLOS is a standing court consisting of twenty-one judges with recognized competence in the field of the law of the sea. It is accorded by UNCLOS the preeminent

Structure of the International Tribunal for the Law of the Sea



position in the resolution and settlement of law of the sea disputes. UNCLOS grants the ITLOS jurisdiction over a variety of international disputes between states involving fisheries, navigation, ocean pollution, and delimitation of maritime zones. The ITLOS has compulsory jurisdiction over the prompt release of arrested vessels and their crews (in certain circumstances and under certain conditions). The tribunal's Sea-Bed Disputes Chamber has its own specialized jurisdiction over disputes arising out of pollution from seabed activities.

HISTORY

The ITLOS could not become operational until UNCLOS entered into force. Although UNCLOS attracted 159 signatories in 1982, it did not gain sufficient ratifications to enter into force until November 14, 1994. The dispute settlement provisions of UNCLOS were not an obstacle to states' acceptance of the convention. Since 1994, the ITLOS, the UN General Assembly, and the states parties to UNCLOS have made great progress in making the tribunal fully operational. At the Conference of the States Parties to UNCLOS, held at the UN in New York in August 1996, the twenty-one judges of the tribunal were each elected for a nine-year tenure (staggered to three, six, and nine years for each group of seven in the first election). Since the United States is not yet a party to UNCLOS, no U.S. citizens serve on the tribunal. In October 1996, UN Secretary-General Kofi Annan inaugurated the new headquarters of the ITLOS in Hamburg, Germany.

A flexible system for the settlement of disputes on the seas was established by the statute of the ITLOS (Annex VI to UNCLOS). To facilitate the work of the ITLOS, the statute establishes special chambers to help with the "speedy dispatch of business." The Sea-Bed Disputes Chamber, as explained in Article 35 of the statute, is composed of eleven members "selected by a majority of the elected members of the Tribunal from among them" for three-year terms. If the need arises, the ITLOS is given the power under Article 15, paragraph 1 to form special chambers, composed of three or more of its elected members, to deal with particular categories of disputes. As a result, in addition to the Sea-Bed Disputes Chamber, the ITLOS has formed three innovative chambers: the Chamber of Summary Procedure, Chamber for Fisheries Disputes, and Chamber for Marine Environment Disputes. The statute also enables the ITLOS to form ad hoc chambers to hear a particular dispute submitted with the approval of the parties involved. Under the statute of the tribunal, a judgment given by any of its chambers is considered as rendered by the tribunal.

The ITLOS has been accorded compulsory jurisdiction in respect to certain matters, and its jurisdiction extends to entities other than states. The ITLOS has special competence to hear applications for the prompt release of vessels and crews under Article 292 and to deal with requests for provisional measures under Article 290, paragraph 5 of UNCLOS. Furthermore, the Sea-Bed Disputes Chamber of the ITLOS also enjoys compulsory jurisdiction in respect to certain disputes referred to in Part XI, section 5 of UNCLOS.

LEGAL PRINCIPLES

When hearing a case under UNCLOS, the ITLOS may draw on a variety of sources of law. UNCLOS Article 293 directs the ITLOS to apply "this Convention and other rules of international law not incompatible with this convention." "Other rules of international law" applicable to disputes arising under UNCLOS, Part XV, include customary international law and other nontreaty sources of international law. This language could be interpreted to allow the ITLOS to go beyond UNCLOS and apply norms developed in other contexts. The ITLOS may, for example, refer to generally accepted human rights norms to determine alleged mistreatment of a flagship's crew by another state. Other UNCLOS articles incorporate generally accepted "international rules and standards" governing the use of the seas. Such rules and standards apply to states parties that have not separately accepted them (Noyes 1998, 124–125).

MEMBERSHIP AND PARTICIPATION

As of January 2001, 135 states and one nonstate entity (the European Union) ratified UNCLOS. The twenty-four ratifying states specifically expressing their choice of procedure for dispute settlement under Article 287 selected the following forums:

- Eleven choose the ITLOS as their first preference (Argentina, Austria, Cape Verde, Chile, Croatia, Germany, Greece, Oman, Portugal, Tanzania, Uruguay)
- Six preferred the ICJ (Algeria, the Netherlands, Norway, Spain, Sweden, and the United Kingdom)
- Three selected the ITLOS and the ICJ without stating a preference between the two (Belgium, Finland, and Italy)
- Two decided on arbitration (Egypt and the Ukraine)
- Two rejected jurisdiction of the ICJ for any types of disputes (Cuba and Guinea-Bissau)

The other ratifying states parties reserve their right to select their choice of procedure for dispute settlement at any other time, as provided in the mentioned article.

It should be noted that many of the states parties to UNCLOS previously accepted the compulsory jurisdiction of the ICJ in legal disputes concerning the interpretation of a treaty and any question of international law (through their acceptance of the optional clause of Article 36, paragraph 2, of the statute of the ICJ). Taking this into account, the total number of states parties to UNCLOS bound to the compulsory jurisdiction of the ICJ (either under the optional clause or under Article 287) rises to forty-three.

PROCEDURE

UNCLOS expressly grants states parties access to the ITLOS and its chambers, clearly contemplating that states will be the primary users and beneficiaries of this dispute settlement system. The UNCLOS definition of "states parties," however, is not limited to states. The definition includes international organizations with treaty-making competence and territories with full internal self-governance. The ITLOS may also exercise jurisdiction in some cases in which individuals or corporations are parties.

UNCLOS allows for natural or juridical persons to have access to the ITLOS in at least two types of cases. First, Article 292, section 2 envisions individual access to the ITLOS to seek the prompt release of vessels and crews detained by a coastal state when such access is authorized by the flag state of the detained vessel. And second, Articles 187 and 188 allow natural or juridical persons to bring Part XI claims regarding the deep seabed to the ITLOS's Sea-Bed Disputes Chamber (Noyes 1998, 133).

The statute of the ITLOS may also allow the ITLOS to hear disputes involving private parties. Article 20 grants nonstate entities access to the ITLOS "in any case submitted pursuant to any other agreement conferring jurisdiction on the ITLOS which is accepted by all the parties to that case." Article 21 authorizes jurisdiction over "all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal." This "any other agreement" basis for jurisdiction could apply to a broad range of situations, including disputes over the application of international environmental rules on the seas (Noyes 1998, 134).

Even when the disputing parties have not separately accepted the ITLOS's jurisdiction, UNCLOS Article 292 grants the tribunal jurisdiction over applications for the prompt release of vessels and their crews. When a coastal state detains a vessel and allegations can be established "that the detaining state has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond," the ITLOS may order the release of the vessel or its crew upon the submission of such a reasonable financial guarantee. To avoid delays, Article 292 grants compulsory jurisdiction to the ITLOS, rather than an arbitral tribunal, when the parties are unable to agree on a tribunal. There is general agreement among scholars that detentions of vessels for violating exclusive economic zone (EEZ) fishing regulations under Article 73, rules concerning pollution from vessels under Article 220, and investigations of foreign vessels for specified pollution violations under Article 226 fall within the scope of Article 292. These articles specifically refer to the release of those vessels on the posting of a bond or financial security (Noyes 1998, 134).

The eleven-member Sea-Bed Disputes Chamber plays a central role in Part XI's dispute settlement provisions, which concern seabed mining beyond the limits of national jurisdiction. This chamber has jurisdiction over the interpretations and application of Part XI, certain acts of the International Sea-Bed Authority, mining contracts, and certain activities on the deep seabed.

STAFFING

States parties to UNCLOS nominate and elect twenty-one judges to the ITLOS for renewable nine-year terms "from among persons enjoying the highest reputations for fairness and integrity and of recognized competence in the field of the law of the sea." The ITLOS "as a whole" should represent "the principle legal systems of the world." "Each geographical group as established by the General Assembly of the United Nations" is to be represented by at least three members. Every party in each case is entitled to have on the bench a member of its nationality of choice.

The ITLOS statute emphasizes the importance of judicial impartiality and fairness. A judge may not have a financial interest in operations connected with oceans resources or act as legal counsel for one of the parties. The ITLOS's first elected twenty-one judges included academics with expertise in the law of the sea and officials familiar with the lengthy negotiations drafting UNCLOS.

CASELOAD

The ITLOS has decided the following six cases:

ITLOS Cases 1 and 2, M/V *Saiga, Saint Vincent and the Grenadines v. Guinea*

The ITLOS deliberated on the arrest by Guinea of a Cypriot-owned, Scottish-managed, and Swiss-chartered tanker flying the flag of Saint Vincent and the Grenadines and with a crew from Senegal and Ukraine. After provisionally reviewing the facts in December 1997, the ITLOS found that since Guinea arrested the vessel for alleged fishing violations committed within Guinea's EEZ, Guinea was thus obligated under UNCLOS to release the *Saiga* and its crew upon the posting of a reasonable bond or other financial security. When a bond was subsequently posted, Guinea rejected it. The ship and crew were released only after Saint Vincent and the Grenadines pursued other provisional measures from the tribunal. After a full review of the facts, in 1999 the ITLOS found Guinea's detention of the M/V *Saiga*, prosecution of its master, and confiscation of the cargo and seizure of the ship to be unlawful. The ITLOS awarded reparations to Saint Vincent and the Grenadines in the amount of U.S.$2,123,357 (Oxman and Bantz 2000; Murphy 2000, 338).

ITLOS Cases 3 and 4, Southern Bluefin Tuna Cases, *Australia and New Zealand v. Japan*

In 1999 Australia and New Zealand claimed before the ITLOS that the southern bluefin tuna was significantly overfished because of Japan's failure to abide by limits set under the 1993 Convention for the Conservation of Southern Bluefin Tuna. The southern bluefin tuna migrates between the territorial sea, the exclusive economic zone, and the high seas of several states. Using an experimental fishing program, Japan had exceeded its previously agreed-upon limit for southern bluefin tuna. Australia and New Zealand requested that the ITLOS take interim measures of protection against Japan for the conservation of tuna. The tribunal issued an interim order calling upon the parties to maintain their catches at the annual national allocations last agreed upon by the parties and pursue negotiations with a view to reaching agreement on measures for conservation and management of southern bluefin tuna (Kwiatkowska 2000; Murphy 2000, 338).

ITLOS Case 5, The "Camouco" Case, *Panama v. France*

The case concerned the fishing vessel *Camouco*, which flew the Panamanian flag. In September 1999, the *Camouco* was arrested by a French frigate, allegedly for unlawful fishing in the exclusive economic zone of the Crozet Islands (French Southern and Antarctic Territories). French authorities escorted the Spanish master to Réunion. Panama requested that the ITLOS order the prompt release of the *Camouco* and its master. France urged the ITLOS to reject the submissions of Panama, but in case the tribunal decided that the *Camouco* was to be released upon a bond, that the bond be no less than French francs (FF) 20 million. On February 7, 2000, the ITLOS delivered its judgment, ordering the prompt release of the vessel and its master on the deposit of a financial security of FF 8 million, approximately U.S.$1.2 million. The prompt release procedure under Article 202 of UNCLOS provides for a quick remedy, the speedy release of a vessel and its crew out of humanitarian considerations, and avoidance of unnecessary loss for the shipowner or others affected by the detention. This judgment does not include a determination of the merits of the underlying dispute (ITLOS/Press 35, 2000).

ITLOS Case 6, The "Monte Confurco" Case, *Seychelles v. France*

The vessel *Monte Confurco* was registered in the Republic of the Seychelles and licensed by it to fish in international waters. The French frigate *Floreal* apprehended the vessel for alleged illegal fishing and failure to announce its presence in the exclusive economic zone of the Kerguelen Islands. Seychelles requested ITLOS to order the prompt release of the *Monte Confurco* and its master. France asked the ITLOS to declare that the bond set by the French authorities was reasonable and thus the application was inadmissible. After unanimously finding that it had jurisdiction under UNCLOS Article 292, the tribunal decided in favor of Seychelles. In December 2000, the ITLOS ordered France to promptly release the *Monte Confurco* and its master upon the posting of a bond or other security equaling FF 9 million (ITLOS/Press 42, 2000).

IMPACT

The ITLOS has effectively demonstrated in its first six cases that it is able to help states settle their disputes. In a very short time, the ITLOS in its juridical role has contributed to the promotion of a stable international legal system on the seas. The "southern bluefin tuna" case revealed the ways in which this tribunal can adjudicate conflicts and enforce the rules of international environmental law against deviant states. In the "Saiga," "Camouco," and "Monte Confurco" cases, the ITLOS consistently applied international standards to the release

of vessels and crews. Over time, it should be able to engage national courts on the integration of international standards into their national legal systems. Its work with the Sea-Bed Authority should help advance a stable legal environment for the deep seabed. The ITLOS is thus poised to make a significant contribution toward effective international governance through international law in this era of rapid economic globalization.

William F. Felice

See also Australia; France; Guinea; International Arbitration; International Court of Justice; Japan; New Zealand; Panama; Saint Vincent and the Grenadines; Seychelles

References and further reading

ITLOS/Press 35. 2000. "Tribunal Delivers Judgment in the 'Camouco' Case," http://www.un.org/Depts/los/itlos_new/press_releases/ITLOS_35.htm.

ITLOS/Press 42. 2000. "Tribunal Delivers Judgment in the 'Monte Confurco' Case," http://www.un.org/Depts/los/itlos_new/press_releases, then follow link itlos_42e.pdf.

Kwiatkowska, Barbara. 2000. "Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Order on Provisional Measures (ITLOS Cases Nos. 3 and 4)." *The American Journal of International Law* 94: 150–155.

Murphy, Sean D. 2000. "Conference on International Environmental Dispute Resolutions: Does the World Need a New International Environmental Court?" *George Washington Journal of International Law and Economics* 32: 333–349.

Noyes, John E. 1998. "The International Tribunal for the Law of the Sea." *Cornell International Law Journal* 32: 109–182.

Oxman, Bernard H., and Vincent Bantz. 2000. "The M/V 'Saiga' (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment (ITLOS Case No. 2)." *The American Journal of International Law* 94: 140–150.

IOWA

GENERAL INFORMATION

Iowa is a west-north-central state, bordered by the Mississippi River on the east and the Missouri River on the west, with the states of Minnesota and Missouri to the north and south, respectively. Iowa was home to approximately seventeen different Native American tribes before being visited by French explorers Louis Joliet and Father Jacques Marquette. It was acquired by the United States as part of the Louisiana Purchase of 1803 and became the twenty-ninth U.S. state in 1846.

Iowa's population has remained relatively stable for several decades. Its 2000 population was approximately 2.9 million, ranking it thirtieth among the states. Approximately 39 percent of the population lives in rural areas. The racial distribution in Iowa is 96.6 percent white, 1.7 percent black, and 1.2 percent Hispanic.

Economically, Iowa is primarily a farm state. As of 1995, it ranked third behind Missouri and Texas in the number of farms. Iowa's population is known to be well-educated and hardworking. Iowa usually ranks among the top two or three states on measures of education.

Politically, Iowa is known for its caucuses, which are considered the first true test for candidates seeking the presidency of the United States. The caucuses give Iowa a more prominent place on the political stage in the United States than would be expected given its size. As of 1998, Iowa's registered voters were split nearly evenly between Democrats (32 percent), Republicans (33 percent), and unaffiliated voters and minor parties (35 percent).

EVOLUTION AND HISTORY

Iowa has had three constitutional conventions. The first, in 1844, produced a draft that was rejected by voters, primarily because of boundary questions. The second constitution, drafted in 1846, was the instrument by which Iowa gained statehood. The third constitution, drafted in 1857, is still in effect today, though it has been amended many times.

The 1857 Constitution followed the model of the U.S. Constitution by establishing three branches of government (executive, legislative, and judicial). Unlike the national constitution, however, the separation of powers was made explicit. The executive branch is headed by a popularly elected governor. The bicameral legislature is composed of a 100-member lower chamber (House) and a 50-member upper chamber (Senate).

The Iowa Constitution establishes a Supreme Court and district courts. The legislature is given the power to create other courts inferior to the Supreme Court. Because of the increasing workload of the Iowa Supreme Court, in 1976 the legislature created the Iowa Court of Appeals. A variety of specialty courts were consolidated into a unified trial court system in 1973. In 1998, the Iowa legislature approved the Appellate Restructuring Plan, which reduced the number of justices on the Iowa Supreme Court and increased the number of judges on the Iowa Court of Appeals.

Under Iowa's 1846 Constitution, judges were elected by a vote in both chambers of the legislature. The 1857 Constitution changed this practice to a direct election by the voters, which was changed in 1962 to the current merit system.

CURRENT STRUCTURE

The Iowa Supreme Court is at the top of the state's judicial system. Seven justices sit on the Supreme Court for eight-year terms. The chief justice is elected by a majority vote of the justices and serves as the administrative head of the court. The justices hear cases en banc (as a group). The Supreme Court is primarily responsible for developing case law and ensuring its consistent application.

The Iowa Court of Appeals is an intermediate court of

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