

ARTICLES

JUDICIAL SETTLEMENT OF INTERNATIONAL MARITIME DISPUTES — AN OVERVIEW OF THE CURRENT SYSTEM*

Hon. Choon-ho Park**

I. INTRODUCTION

Until the end of the nineteenth century, war was a major means of settling disputes between states, hence the concept of “just war” in international law. Since the 1899¹ and 1907² Hague peace conferences, however, this concept has been undergoing a change toward peaceful settlements. War, aggression, and intimidation as means of settling international disputes are no longer the norm. Because of the unconventional and irregular ways in which wars are waged and fought today, even the term “war” is used much less frequently, having been replaced by the term “armed conflict.”

The settlement of international maritime disputes is no exception to this new rule, as specified in the 1982 United Nations Con-

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** Member, the International Tribunal for the Law of the Sea; Professor of International Law, Seinan Gakuin University Faculty of Law, Fukuoka, Japan. The views expressed here are the author's own and do not in any way represent those of the Tribunal. A summary of this paper was first delivered by the author in the Distinguished Lecturers Series at Stetson University College of Law on November 7, 1998.

1. Convention for the Pacific Settlement of Disputes, July 29, 1899, 32 Stat. 1799; T.S. No. 536; 1 Bevans 230 (entered into force on Sept. 4, 1900).

2. Convention for the Pacific Settlement of Disputes, October 18, 1907, 36 Stat. 2199; T.S. No. 536; 1 Bevans 577 (entered into force on Jan. 26, 1910, replacing the 1907 Convention).

vention on the Law of the Sea (the Convention),³ which derives its authority from the Charter of the United Nations.⁴ For the purpose of this paper, the relevant provision of the Convention relating to dispute settlement is:

Article 279. Obligation to Settle Disputes by Peaceful Means
States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter.⁵

With this in mind, this paper presents a brief description of the current international judicial organs with general jurisdiction at the global, regional, and specialized levels, and the maritime dispute settlement mechanisms, particularly the International Court of Justice (the Court) and the International Tribunal for the Law of the Sea (the Tribunal).⁶ Some notable functional differences between these two major international judicial organs are also briefly described as they specifically relate to the settlement of maritime disputes.

II. INTERNATIONAL JUDICIAL ORGANS

A. The International Court of Justice⁷

3. See U.N. CONFERENCE ON THE LAW OF THE SEA, U.N. CONVENTION ON THE LAW OF THE SEA, at 1, U.N. Doc. A/CONF.62/122, U.N. Sales No. E.83.V.5 (1983) [hereinafter U.N. CONVENTION ON THE LAW OF THE SEA].

4. See *id.* art. 279. "Accordingly, our respective governments . . . have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations." U.N. CHARTER pmbl.

5. U.N. CONVENTION ON THE LAW OF THE SEA, *supra* note 3, art. 279.

6. See U.N. CHARTER, art. 7, ¶ 1. Article 7 provides that "[t]here are established as the principal organs of the United Nations: A General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat." *Id.*

7. For a definitive work on the Court, see 1-4 SHABTAI ROSENNE, *THE LAW AND PRACTICE OF THE INTERNATIONAL COURT, 1920-1996* (3d ed. 1997). For a report on the efficiency and working practices of the Court, see *THE INTERNATIONAL COURT OF JUSTICE: PROCESS, PRACTICE AND PROCEDURE* (J.P. Gardner & Chanaka Wickremasinghe eds., 1997).

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The Court is one of the component bodies of the United Nations based in The Hague, The Netherlands.⁸ It is the major international judicial organ, with its fifteen members, commonly called judges, elected separately by the U.N. General Assembly and the Security Council for a term of nine years.⁹ Only states can bring contentious cases before it, either by special agreement between the parties to a dispute or by a unilateral application by either party.¹⁰ Some specified international organizations, including the United Nations itself, can seek what is called an "Advisory Opinion" from the Court.¹¹ The Court has actually settled a number of maritime cases, the first being the North Sea Continental Shelf Cases of 1969 between former West Germany on one side and Denmark and the Netherlands on the other.¹²

B. The International Tribunal for the Law of the Sea¹³

Specifically for the settlement of maritime disputes and in compliance with the Convention, the International Tribunal for the Law of the Sea was established in October 1996 with its seat in Hamburg, Germany.¹⁴ At the Conference of the States Parties to the Con-

8. See Statute of the International Court of Justice, June 26, 1945, art. 22, 59 Stat. 1057 [hereinafter ICJ Statute].

9. See *id.* art. 13, 59 Stat. 1056.

10. See *id.* art. 34, 59 Stat. 1059.

11. See *id.* art. 65, 59 Stat. 1063.

12. See North Sea Continental Shelf Cases (F.R.G. v. Den.; F.R.G. v. Neth.), 1969 I.C.J. 3 (Feb. 20).

13. For a series of articles on the Tribunal by its nine judges, see, for example, Joseph Akl, *The Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea*, 37 INDIAN J. INT'L L. 435 (1997); Gudmundur Eiriksson, *The Role of the International Tribunal for the Law of the Sea in the Peaceful Settlement of Disputes*, 37 INDIAN J. INT'L L. 347 (1997); Deward Laing, *Automation of an International Judicial Organ: A Preliminary Analysis*, 37 INDIAN J. INT'L L. 452 (1997); Thomas Mensah, *The Place of the International Tribunal for the Law of the Sea in the International System for the Peaceful Settlement of Disputes*, 37 INDIAN J. INT'L L. 466 (1997); L.D.M. Nelson, *The International Tribunal for the Law of the Sea: Some Issues*, INDIAN J. INT'L L., *supra* at 388; Tullio Treves, *The Jurisdiction of the International Tribunal for the Law of the Sea*, 37 INDIAN J. INT'L L. 396 (1997); Budislav Vukas, *The International Tribunal for the Law of the Sea: Some Features of the New International Judicial Institution*, 37 INDIAN J. INT'L L., 372; Rudiger Wolfrum, *Provisional Measures of the International Tribunal for the Law of the Sea*, 37 INDIAN J. INT'L L. 420 (1997); Alexander Yankov, *The International Tribunal for the Law of the Sea: Its Place Within the Dispute Settlement System of the U.N. Law of the Sea Convention*, 37 INDIAN J. INT'L L. 356 (1997).

14. See U.N. CONVENTION ON THE LAW OF THE SEA, *supra* note 3, Annex VI, art. 1,

vention held at the U.N. headquarters in New York in August 1996,¹⁵ 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).¹⁶ The jurisdiction of this Tribunal is not exclusive to the extent that the parties to a dispute may choose it as one of the four judicial means open to them, as noted below.¹⁷

The Tribunal decided its first case in December 1997¹⁸ and the second in March 1998,¹⁹ with the third to be decided in June 1999.²⁰ All three cases involve a St. Vincent and the Grenadines oil tanker, the *Saiga*, which was seized by Guinea in the offshore waters of Guinea in October 1997, allegedly for smuggling.²¹ Although this case involves the same vessel, by practice in international litigation, it is handled as three separate cases, namely, the prompt release of the vessel and its crew, the prescription of provisional measures, and the merits of the case itself.²²

Unlike the Court, the Tribunal can give Advisory Opinions only with respect to specific seabed disputes referred to it by the Jamaican-based International Seabed Authority, which was also estab-

¶ 2.

15. See *Oceans and the Law of the Sea — Settlement of Disputes* (visited Feb. 17, 1999) <http://www.in.org/Depts/los/los_disp.htm>.

16. See U.N. CONVENTION ON THE LAW OF THE SEA, *supra* note 3, Annex VI, art. 2, ¶ 1 & Annex VI, art. 5, ¶ 1.

17. See *id.* art. 287, ¶ 1(a)–(d).

18. See *St. Vincent and the Grenadines v. Guinea (The M/V “Saiga”)*, 37 I.L.M. 360 (Int'l Trib. for Law of Sea, Dec. 4, 1997) [hereinafter *St. Vincent I*].

19. See *St. Vincent and the Grenadines v. Guinea (The M/V “Saiga”)*, 37 I.L.M. 1202 (Int'l Trib. for Law of Sea, Mar. 11, 1998) [hereinafter *St. Vincent II*].

20. The author is aware of this information as a member of the International Tribunal for the Law of the Sea.

21. See *St. Vincent I*, 37 I.L.M. at 367.

22. For the texts of the judgment on the prompt release of the vessel and its crew and the order prescribing the provisional measures, see the 1998 Yearbook of the Tribunal (forthcoming in 1999 from Kluwer Law International). For commentaries on the *M/V Saiga* judgment, see, for example, E.D. Brown, *The M/V “Saiga” Case on Prompt Release of Detained Vessels: The First Judgment of the International Tribunal for the Law of the Sea*, 2 MARINE POL'Y 307 (1998); Bernard Oxman, *The M/V “SAIGA”* (Saint Vincent and the Grenadines v. Guinea), *ITLOS Case No. 1, International Tribunal for the Law of the Sea, December 4, 1997*, 92 AM. J. INT'L L. 278 (1998); David Pitlarge, *The Judgment of the UNCLOS Tribunal in St. Vincent and the Grenadines v. Guinea: M/V “Saiga,”* 2 INT'L MAR. L. 35 (1998); Bernard Vanheule, *Arrest of Seagoing Vessels and the L.O.S. Convention: Does the New International Tribunal for the L.O.S. Offer New Prospects?*, 4 INT'L MAR. L. 106 (1998).

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lished by the Convention.²³ Besides these two universal judicial organs, there are two additional forums for settling maritime disputes open to the States parties to the Convention.²⁴ Relevant provisions of Article 287 are:

Article 287. Choice of Procedure.

1. When ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
- (b) the International Court of Justice;
- (c) an arbitral tribunal constituted in accordance with Annex VII;
- (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

As of December 1998, 128 States and one non-State entity (the European Union) ratified the Convention, 20 of which have specifically expressed their choices upon ratification.²⁵ The others reserve their right to do so at any other time, as provided in the above Article.²⁶

III. OTHER COURTS AND TRIBUNALS AT THE UNIVERSAL LEVEL²⁷

The Administrative Tribunals of the International Labor Organization and the United Nations both fit the definition of an international tribunal, because they settle disputes between the organizations and their staff members.²⁸ In addition to the above-mentioned courts, the U.N. held a series of diplomatic conferences to es-

23. See U.N. CONVENTION ON THE LAW OF THE SEA, *supra* note 3, art. 159, ¶ 10.

24. See *id.* art. 287, ¶ 1(a)-(d).

25. See *Oceans and the Law of the Sea — Table Showing the Current Status of the United Nations Convention on the Law of the Sea and of the Agreement Relating to the Implementation of Part XI of the Convention* (visited Feb. 25, 1999) <<http://www.un.org/Depts/los/los94st.htm>>.

26. U.N. CONVENTION ON THE LAW OF THE SEA, *supra* note 3, art. 287, ¶ 1(a)-(d).

27. See 2 MAX PLANCK INSTITUTE FOR COMPARATIVE PUBLIC LAW AND INTERNATIONAL LAW, ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 1109 (Rudolf Bernhardt ed., 1992) [hereinafter ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW].

28. See *id.*

establish an International Criminal Court (ICC) to deal with war crimes.²⁹ At its final session in July 1998 in Rome, the U.N. decided to set up the ICC as the third permanent judicial organ at The Hague.³⁰ The ICC would essentially perform the same duties as the post-war Nuremberg³¹ and Tokyo War Crimes Tribunals,³² and the current former-Yugoslavia³³ and Rwanda³⁴ Tribunals. Unlike these two tribunals currently trying those suspected of crimes they committed during civil disturbances in their own countries, the ICC would be a permanent tribunal with eighteen members.³⁵ The expectation is that such standing arrangements would also have preventive effects on those who might otherwise commit similar crimes against humanity.³⁶

IV. COURTS AND TRIBUNALS AT THE REGIONAL LEVEL

A. Europe

In Europe, there are six international courts and tribunals in force, all of which have different functions.³⁷ The Court of Justice of the European Communities is among the oldest of the regional judicial organs in the world, having begun its work in 1952 as the judicial arm of the European Coal and Steel Community.³⁸ The European Court of Human Rights, established by the European Convention on Human Rights in 1959 is the tribunal that hears charges of

29. See Rome Statute of the International Criminal Court, U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, at 5-6, U.N. Doc. A/CONF.183/9 (1998) [hereinafter Rome Statute].

30. See *id.* at 5.

31. See William B. Simons, *The Jurisdictional Bases of the International Military Tribunal at Nuremberg*, in *THE NUREMBERG TRIAL AND INTERNATIONAL LAW* 39 (George Ginsburgs & V.N. Kudriavtsev eds., 1990) (University of Leyden Documentation Office for East European Law Studies' Law in Eastern Europe Series, No. 42, 1990).

32. See ARNOLD C. BRACKMAN, *THE OTHER NUREMBERG: THE UNTOLD STORY OF THE TOKYO WAR CRIMES TRIALS* 1 (1987).

33. See *Prosecutor v. Jean-Paul Akayesu*, 37 I.L.M. 1399 (Int'l Crim. Trib. for Rwanda Sept. 2, 1998).

34. See *Prosecutor of the Tribunal v. Dusko Tadic*, 36 I.L.M. 908 (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997).

35. See Rome Statute, *supra* note 29, at 27.

36. See *id.* at 4.

37. See *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, *supra* note 27, at 1109-10.

38. See *id.* at 1109.

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convention breaches against a state.³⁹ The tribunal that interprets the laws is the Court of Justice of the Benelux Economic Union, established in 1974.⁴⁰ The fourth tribunal is the Benelux Arbitral College, also established in 1974, which is primarily an arbitration-type dispute settlement forum.⁴¹ The European Nuclear Energy Tribunal, established under the terms of the Organization for Economic Cooperation and Development (OECD) of 1957, is a limited jurisdiction tribunal, dealing only with issues regarding nuclear energy.⁴² Finally, the Western European Union Tribunal, when established, will be for “the protection of private interest against measures for the control of armaments.”⁴³ It should be pointed out, however, that not all these regional judicial organs have been active in their operations. For instance, the Benelux Arbitral College and the European Nuclear Energy Tribunal have yet to decide a case.⁴⁴

B. The Americas

In July 1978, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, patterned more or less on the European models, came into existence.⁴⁵ The Arbitration Tribunal of the Central American Common Market was established to settle disputes between the Central American States.⁴⁶ Unfortunately, tensions between these states make arbitration or settlement resolution unlikely.⁴⁷ The countries of the Andean Pact of 1979 have decided to establish a Court of Justice for the purpose of resolving conflicts arising from the Pact itself.⁴⁸

C. Africa

39. *See id.*

40. *See id.* at 1110.

41. *See id.*

42. *See id.*

43. ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, *supra* note 27, at 1110.

44. *See id.*

45. *See id.*

46. *See id.*

47. *See id.*

48. *See id.*

The East African Common Market, comprised of Uganda, Tanzania, and Kenya, instituted a Tribunal in 1972 which resembled the early European court of justice.⁴⁹ Like the Central American common market, hostilities among these countries make the purpose of the tribunal unlikely to succeed, and in all probability it will fail.⁵⁰

V. INSTITUTION OF PROCEEDINGS

As briefly noted above,⁵¹ for the settlement of a dispute, the parties can submit their case to a judicial organ either by a special agreement or by application.⁵² By special agreement, the parties agree to involve a third party — a court, a tribunal, or other similar means — while by application, either party applies unilaterally to a third party to settle the dispute.⁵³ When either party institutes proceedings by unilateral application, the other party is notified by the party called on to adjudicate the case.⁵⁴

In the case of a party's unilateral application to a judicial organ for proceedings, the other party can contest the jurisdiction of that organ.⁵⁵ The decision on this preliminary objection, which is not seen in domestic-law proceedings, is a prerequisite to the final decision on the merits of the case.⁵⁶

VI. SOME FUNCTIONAL DIFFERENCES BETWEEN THE COURT AND THE TRIBUNAL⁵⁷

In its structure and function, the Tribunal for the Law of the

49. See ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, *supra* note 27, at 1110.

50. See *id.*

51. See discussion *supra* Part II.A.

52. See ICJ Statute, *supra* note 8, art. 40, 59 Stat. 1061.

53. See ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, *supra* note 27, at 1093.

54. See *id.*

55. See *id.* at 1095.

56. See *id.*

57. See Alan Boyle, *The Proliferation of International Jurisdiction and Its Implications for the Court*, in THE INTERNATIONAL COURT OF JUSTICE: PROCESS, PRACTICE AND PROCEDURE, *supra* note 7, at 124; Shabtai Rosenne, *The International Tribunal for the Law of the Sea and the International Court of Justice: Some Points of Difference*, in THE BALTIC SEA: NEW DEVELOPMENTS IN NATIONAL POLICIES AND INTERNATIONAL COOPERATION 200 (Renate Platzöeder & Philomene Verlaan eds., 1995).

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Sea is patterned basically on the International Court of Justice,⁵⁸ but there are some significant differences between the two entities. Some of these differences pertain to the following: (a) the access to the judicial organs; (b) the prompt release of vessels and their crews; and (c) the effect of provisional measures.⁵⁹

In contentious cases, the access to the Tribunal is not confined to States, as provided in its Statute:⁶⁰

Article 20. Access to the Tribunal.

1. The Tribunal shall be open to States Parties.
2. The Tribunal shall be open to entities other than States Parties in any case expressly provided for in Part XI or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case.⁶¹

Thus, the Tribunal is more accessible than the Court. Even a “fishing entity” could have access to the Tribunal under Article 1(3) of the 1995 Straddling Stocks Agreement.⁶²

The provisions of the Convention relating to the prompt release of vessels and their crews are a new concept in the international law of the sea.⁶³ This rationale is based on the particular nature of shipping operation; a ship does not have to be under physical seizure in order to be dealt with legally.⁶⁴ This is a procedural phase of a larger dispute to be ultimately settled by the court. As noted earlier, the *Saiga* case between St. Vincent and the Grenadines and Guinea first underwent this phase in December 1997.⁶⁵

Another procedural aspect of a dispute referred to a court or a tribunal is the provisional measures to be taken as a temporary in-

58. See Rosenne, *supra* note 57, at 200.

59. See *id.*

60. See U.N. CONVENTION ON THE LAW OF THE SEA, *supra* note 3, art. 291, ¶ 2.

61. *Id.* Annex VI, art. 20, ¶¶ 1–2.

62. See *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, U.N. Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, 6th Sess., at 1, U.N. Doc. A/CONF.164/37 (1995), reprinted in 37 I.L.M. 1547 (1995).

63. See U.N. CONVENTION ON THE LAW OF THE SEA, *supra* note 3, art. 73, ¶¶ 1–2.

64. UNCLOS 1982, vol. II Commentary re: art. 73.

65. See *St. Vincent I*, 37 I.L.M. at 368–69.

junction.⁶⁶ The purpose is to protect the rights of the parties and to prevent possible damage to the environment, pending the final decision of the dispute.⁶⁷ In the case of the Court, such provisional measures are “indicated,” unlike in the case of the Tribunal, which “prescribe” such measures.⁶⁸ In specific terms, the Convention provides that: “[T]he parties to the dispute shall comply promptly with any provisional measures prescribed under this article.”⁶⁹

VII. CONCLUDING REMARKS

The international maritime dispute settlement mechanism currently in force is by no means complete and effective. However, the Tribunal represents the first universal endeavor specifically for this purpose. Unlike in most other cases where a newly established international judicial organ had to wait for an extended period of time before a case was brought to it, the Tribunal was called on to deal

66. See ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, *supra* note 27, at 1095.

67. See *id.*

68. For discussions on prompt release of vessels and crews, see *Provisional Report of Special Commission 4 of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, 19 January 1994, Final Draft of the Rules of the Tribunal, Articles 89-93*, U.N. Special Commission 4 of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, U.N. Doc. LOS/PCN/SCN.4/WP.16/Add. 1 (1994) (concerning the prompt release of vessels and crews); 2 UNIVERSITY OF VIRGINIA CENTER FOR OCEANS AND POLICY, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: COMMENTARY 784 (Myron Nordquist ed., 1993) (regarding Article 73); 4 UNIVERSITY OF VIRGINIA CENTER FOR OCEANS AND POLICY, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: COMMENTARY 279 (Myron Nordquist, ed., 1991) (regarding Article 220); 4 UNIVERSITY OF VIRGINIA CENTER FOR OCEANS AND POLICY, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: COMMENTARY 334 (Myron Nordquist ed., 1991) (regarding Article 226); 5 UNIVERSITY OF VIRGINIA CENTER FOR OCEANS AND POLICY, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: COMMENTARY 66 (Myron Nordquist ed., 1989) (regarding Article 292); David Anderson, *Investigation, Detention and Release of Foreign Vessels Under the U.N. Convention on the Law of the Sea of 1982 and Other International Agreements*, 11 INT'L J. MAR. & COASTAL L. 165 (1996); Rainier Lagoni, *The Prompt Release of Vessels and Crews Before the International Tribunal for the Law of the Sea*, 11 INT'L J. MAR. & COASTAL L. 147 (1996); Bernard Oxman, *Observations on Vessel Release Under the United Nations Convention on the Law of the Sea*, 11 INT'L J. MAR. & COASTAL L. 201 (1996); J. Ashley Roach, *Dispute Settlement in Specific Situations*, 7 GEO. INT'L ENVTL. L. REV. 775, 785 (1995); Tullio Treves, *The Proceedings Concerning Prompt Release of Vessels and Crews Before the International Tribunal for the Law of the Sea*, 11 INT'L J. MAR. & COASTAL L. 179 (1996).

69. U.N. CONVENTION ON THE LAW OF THE SEA, *supra* note 3, art. 290, ¶ 6.

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with a dispute within a year of its inception,⁷⁰ followed by a second,⁷¹ and a third,⁷² consecutively. This may be either an isolated instance or an indication of what is to follow in succession. In other words, the Tribunal has yet to stand the test of time and, more importantly, the test of its own performance.

In the case of many developing countries, the availability of domestic expertise and financial resources is an obstacle to access to the courts, because international litigation is an expensive undertaking. At the Court, for instance, the U.S.-Iran Hostages Case of 1979 took 177 days, and the El Salvador-Honduras Frontier Dispute of 1986 (with Nicaragua intervening) took 2101 days.⁷³ In the U.S.-Canada Gulf of Maine Case of 1981, no less than thirty volumes (sixteen by the United States and fourteen by Canada) of documents annexed with more than 450 maps in different colors and sizes were presented to the Court, a record few other countries could match, if ever.⁷⁴

In the final analysis, there is a more fundamental point. As noted above, since World War II there has been a proliferation of international judicial organs. This does not mean that for the settlement of disputes, the community of nations is ready and willing to turn to them as a matter of course. The attitude toward litigation varies from culture to culture; in some cultures, it is indeed the last resort. Foremost among the countries most reluctant to court-going are those of East Asia and the former East Europe with the former Soviet Union in the lead. From the former region, only a single case was brought to the Court in its half-century history up to 1995, namely, the Cambodia-Thai Temple of Preah Vihear Case of 1959,⁷⁵ and two more are reportedly under consideration in the late 1990s.⁷⁶

70. *See* St. Vincent I, 37 I.L.M. at 360.

71. *See* St. Vincent II, 37 I.L.M. at 1202.

72. *See supra* note 20.

73. *See* INTERNATIONAL COURT OF JUSTICE: PROCESS, PRACTICE AND PROCEDURE, *supra* note 7, at 83.

74. *See* Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.), 1984 I.C.J. 246 (Oct. 12).

75. *See* Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. 6 (June 15).

76. On November 2, 1998, Indonesia and Malaysia brought a territorial dispute to the Court concerning the sovereignty over Pulau Ligitan and Pulau Sipadan, two small islands in the Celebes Sea. *See* Indonesia and Malaysia Jointly Bring Dispute over Islands to the International Court of Justice, International Court of Justice, Press Commu-

niqué 98/35 (Nov. 2, 1998). Another case, involving a dispute between Malaysia and Singapore over the ownership of the island Pulau Batu Pitih, off of Johor, has also arisen. For further details on both cases, see K. Baradan, *History Behind Disputed Islands*, SUNDAY STAR, Oct. 23, 1994, and Paul Jacob, *Islands Dispute: Jakarta Says Going to I.C.J. May Be Possible*, STRAIT TIMES, June 22, 1995.