

**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER**



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BY EMAIL

Dear Mr Serpa Soares,

I am writing in relation to your letter dated 2 December 2022 sent on behalf of the International Law Commission and seeking information and views relevant to the topic “Settlement of international disputes to which international organizations are parties”.

At the outset, I wish to note that the International Tribunal for the Law of the Sea is an international judicial body established by the 1982 United Nations Convention on the Law of the Sea. The Tribunal has jurisdiction to adjudicate disputes concerning the interpretation or application of the Convention and all matters specifically provided for in any other agreement conferring jurisdiction on the Tribunal.

The Tribunal has its seat in Hamburg, Germany. Its privileges and immunities are set forth in the 1997 Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea (hereinafter “the General Agreement”) and the 2004 Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany regarding the Headquarters of the Tribunal (hereinafter “the Headquarters Agreement”). According to the preambles of both agreements, the Tribunal enjoys such legal capacity, privileges and immunities as are necessary for the exercise of its functions. Both agreements are available on the Tribunal’s website (www.itlos.org).

Mr Miguel de Serpa Soares
Under-Secretary-General for Legal Affairs
and United Nations Legal Counsel
United Nations
New York, NY 10017
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Disputes involving States or other intergovernmental organizations

It may be noted that both the General Agreement and the Headquarters Agreement contain provisions dealing with the settlement of disputes between the Tribunal and States Parties to the General Agreement and between the Tribunal and the Government of Germany as the Tribunal's host state, respectively.

In that respect, article 26, paragraph 2, of the General Agreement provides:

All disputes arising out of the interpretation or application of this Agreement shall be referred to an arbitral tribunal unless the parties have agreed to another mode of settlement. If a dispute arises between the Tribunal and a State Party which is not settled by consultation, negotiation or other agreed mode of settlement within three months following a request by one of the parties to the dispute, it shall at the request of either party be referred for final decision to a panel of three arbitrators: one to be chosen by the Tribunal, one to be chosen by the State Party and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators.

Article 33, paragraph 2, of the Headquarters Agreement provides:

Any dispute between the Tribunal and the Government arising out of or concerning the interpretation or application of this Agreement or of any supplementary agreement, or any question affecting the Headquarters district or the relationship between the Tribunal and the Government which is not settled by consultation, negotiation or other agreed mode of settlement, shall be referred, at the request of either party to the dispute, for a final and binding decision to a panel of three arbitrators, one to be chosen by the Tribunal, one to be chosen by the Government, and the third, who shall be the Chairman of the panel, to be chosen by the first two arbitrators.

To date, neither of these dispute settlement clauses has been resorted to.

Contractual disputes

Pursuant to article 5, paragraph 1, of the General Agreement and article 8, paragraph 1, of the Headquarters Agreement, the Tribunal enjoys immunity from legal process. Under article 26, paragraph 1 (a), of the General Agreement and article 33, paragraph 1 (a), of the Headquarters Agreement, the Tribunal shall make suitable provisions for the settlement of "disputes arising out of contracts and other disputes of a private law character to which the Tribunal is a party".

In this regard, it may be noted that it is the practice of the Tribunal to conclude contracts for the procurement of products or services on the basis of its 'General conditions for contracts'. These conditions include the following provision on the settlement of disputes:

16. SETTLEMENT OF DISPUTES:

16.1 Amicable Settlement:

The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedures as may be agreed between the Parties.

16.2 Arbitration

Any dispute, controversy or claim between the Parties arising out of this Contract or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article, within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining.

The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in this Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only.

The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

16.3 Place of conciliation and arbitration

The place of conciliation and arbitration shall be Hamburg.

To date, in the Tribunal's practice, these provisions have not been resorted to since no contractual disputes have arisen.

Labour disputes

The Staff Regulations and Rules of the Tribunal provide a system for addressing a complaint lodged by a staff member against an administrative decision alleging non-observance of that staff member's contract or that staff member's terms of employment or against any disciplinary action taken against that staff member, These Staff regulations and Rules are available on the Tribunal's website.

Under this system, the staff member must first seek an administrative review of the administrative decision or disciplinary action. If not satisfied with the outcome of the review, the staff member may file a complaint before the Tribunal's Conciliation Committee, which shall endeavour to settle the matter by way of conciliation. If conciliation fails, the staff member can submit an application to the Tribunal's Joint Appeals Board (hereinafter the "JAB") (see Staff Regulation 11.2 and Annex VI to the Staff Regulations). The JAB will adopt a report with its decision.

The decision of the JAB can be appealed by the staff member and/or the Registrar of the Tribunal before the United Nations Appeals Tribunal (hereinafter the "UNAT"). An agreement extending the competence of the UNAT for this purpose has been concluded between the Tribunal and the United Nations in 2010 and has been amended in 2021.

A number of judgments have been issued by the UNAT to date in disputes submitted by staff members of the Tribunal. The judgments are available on the website of the UNAT.

Yours sincerely,

Ximena Hinrichs Oyarce
Registrar