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The Answer to Enforcing Multilateral Environmental Agreements: The International Tribunal for the Law of the Sea

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NOTE

THE ANSWER TO ENFORCING MULTILATERAL ENVIRONMENTAL AGREEMENTS: THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

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I. INTRODUCTION

Over the last several decades, the public has shifted its concern for local environmental issues to international environmental issues.[1] This shift in public concern can be attributed to the increase in global pollution as the world industrializes.[2] With this shift, there has been a sudden increase in the number of multilateral environmental agreements (MEAs) entered into amongst the nations of the world to address rising global pollution.[3] Current MEAs cover numerous environmental issues, ranging from the seas and migratory species to hazardous wastes and chemicals, and include multiple states as parties. The adoption of MEAs evidences a consensus among the international community that environmental issues must be addressed. While the adoption of MEAs is a positive and critical step toward protecting the environment on a global level, the adoption of MEAs is only one step in a large process.[4]

It is estimated that there are approximately 900 international agreements currently in effect that address environmental issues in whole or in part.[5] However, despite the drastic increase in the number of MEAs entered into in recent years, "the ecological problems that these treaties were meant to solve persists."[6] Thus, the creation of MEAs

1. *See* Frank Stahler, *Some Reflections on Multilateral Environmental Agreements* 4 (Kiel Inst. for the World Econ., Working Paper No. 647, 1994).

2. *See* Michael J. Kelly, *Overcoming Obstacles to the Effective Implementation of International Environmental Agreements*, 9 GEO. INT'L ENVTL. L. REV. 447, 447 (1997).

3. *See* Renata Rubian & Lynn Wagner, *Summary Report of the High-Level Meeting on Compliance with and Enforcement of Multilateral Environmental Agreements: 21–22 January 2006,* MEA ENFORCEMENT AND COMPLIANCE MEETING BULL. (Int'l Inst. for Sustainable Dev., Ottawa, Canada) Jan. 25, 2006, at 463.

4. *See* DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 371 (Robert C. Clark et al. eds., 4th ed. 2011).

5. *See* Kelly, *supra* note 2, at 448.

6. *Id.*

alone has not served to protect the international environment, but has only shown that the international community agrees that certain environmental issues must be addressed.[7]

International environmental law experts have expressed the opinion that states' implementation of MEAs is largely negated by their lack of willingness to enforce the agreements they have entered into.[8] Further, the international community has voiced concern that current MEAs are neither being complied with nor enforced and that such failures "are one of the leading causes for the continued degradation of the environment."[9] Despite the failures of states to abide by MEAs, "given the current structure of the international community, treaty based regimes are the most effective context in which to deal with thorny environmental challenges on a global scale."[10] Thus, to complete the process of protecting the environment on an international level requires full implementation and enforcement of current and future MEAs. Once compliance is reached, the international community can move forward in the process of bettering the global environment.

If the environmental issues that MEAs seek to address are to be dealt with successfully, a method of enforcing MEAs must be found.[11] Most existing methods of enforcing international environmental law are "slow, cumbersome, expensive, uncoordinated and uncertain."[12] The international community lacks an all-encompassing institution to address noncompliance with MEAs.[13] This causes specific concern in the context of environmental issues because nearly all environmental harm is time-sensitive and irreversible.[14]

II. OBSTACLES TO ENFORCING MULTILATERAL ENVIRONMENTAL AGREEMENTS

To find a solution to the problem of enforcing MEAs, it is necessary

7. *Id.*

8. *See* Rubian & Wagner, *supra* note 3, at 465.

9. *Id.* at 463.

10. Kelly, *supra* note 2, at 448.

11. Geoffrey Palmer, *New Ways to Make International Environmental Law*, 86 AM. J. INT'L L. 259, 259 (1992).

12. *Id.* Palmer found that current methods of addressing international environmental issues are ineffective stating: "Something better must be found if the environmental challenges the world faces are to be dealt with successfully. Nearly twenty years after the Stockholm Declaration, we still lack the institutional and legal mechanisms to deal effectively with transboundary and biospheric degradation." *Id.*

13. *See id.*

14. *See* Teresa A. Berwick, *Responsibility and Liability for Environmental Damage: A Roadmap for International Environmental Regimes*, 10 GEO. INT'L ENVTL. L. REV. 257, 265 (1997–98).

to address the obstacles that currently stand in the way of enforceability. While there are several obstacles that impede the enforcement of MEAs, one of the major obstacles is "the congestion of too many agreements that result in uncoordinated and piecemeal application."[15] Another major obstacle impeding MEA enforcement is the relationship between sovereign states and international non-governmental organizations (NGOs) that is inherent in international environmental agreements.[16]

A. *Obstacle of Treaty Congestion*

One of the main obstacles to enforcing MEAs results from treaty congestion.[17] "Treaty congestion" is a result of the overwhelming number of environmental treaties that have been created since 1972.[18] Due to the high number of international environmental agreements, "there is a great potential for the additional inefficiency of overlapping provisions in agreements, inconsistencies in obligations, significant gaps in coverage, and duplication of goals and responsibilities."[19] This problem is further exacerbated by the fact that many international environmental agreements create dispute resolution procedures with separate tribunals.[20] Thus, where international disputes involve different areas of international law, situations often arise where more than one international tribunal may hear one dispute.[21]

The problems caused by treaty congestion are partially addressed by the Vienna Convention. The Vienna Convention provides rules for the formation, application, and interpretation of treaties, and states that "where treaties overlap, the later in time rule generally operates for similar provisions . . . However, since most modern environmental treaties are global, they are also necessarily multilateral, and there is little chance that all of the parties to the numerous agreements are the same."[22]

A proposed solution to the problem of treaty congestion in enforcing MEAs has been to develop one supranational governing body with the ability to impose binding decisions.[23] However, many states are opposed to the creation of such a forum, as it would infringe on their

15. *Id.*

16. *See* Kelly, *supra* note 2, at 482–83.

17. *Id.* at 458.

18. *Id.*

19. Edith Brown Weiss, *International Environmental Law: Contemporary Issues and the Emergence of a New World Order*, 81 GEO. L.J. 675, 699 (1993).

20. Kelly, *supra* note 2, at 459.

21. *See* Ishaya Paul Amaza, *Multiplicity of International Dispute Settlement Forums: Avoiding the Risk of Parallel Proceedings*, 6 DISP. RESOL. INT'L 149, 150 (2012).

22. Kelly, *supra* note 2, at 459.

23. *Id.* at 459–60.

sovereignty.[24] The larger and more powerful nations appear to have a "consensus among governments that the creation of new institutions should be avoided when possible."[25]

Due to the amount of MEAs that are currently in place, causing treaty congestion, the problem of noncompliance must be addressed in another manner. Furthermore, as the number of MEAs increase, the problem of treaty congestion will necessarily persist. While the creation of a supranational governing body may be ahead of its time, and therefore not a realistic solution, parties to MEAs may be better served by looking to established forums to ensure compliance.

B. *Obstacle of Collective Management*

Another primary obstacle to enforcing MEAs results from the problem of collective management. International environmental action is generally driven by political will to solve or address a current international issue.[26] As a result, "[t]here is an inescapable connection between the international community, constructed of nation-states, and the collection of politics, economics, and social pressures driving those states to take [action]."[27] This connection results in "collective management," where solutions to international environmental issues require international organizations and governments to work together "with NGOs acting in an advisory capacity from the sidelines."[28] The problem with collective management arises here—while NGOs are often the most supportive of international environmental issues, they are not able to participate in disputes regarding MEA noncompliance.[29]

States continue to enter into MEAs while international environmental problems persist because of noncompliance.[30] However, NGOs, such as financial institutions whose investments are threatened by environmental degradation, focus their time, energy, and resources on solving these problems.[31] In addition to solving environmental issues, NGO participation in international environmental issues also brings public awareness to the issues and may lead to social pressure for states to act.[32]

NGOs should be able to participate directly in issues arising under noncompliance with MEAs for these reasons. Although NGOs are not

24. *Id.* at 460.
25. Palmer, *supra* note 11, at 282.
26. *See* Kelly, *supra* note 2, at 482.
27. *Id.*
28. *Id.* at 482–83.
29. *See id.* at 485.
30. Rubian & Wagner, *supra* note 3, at 463.
31. *See* Kelly, *supra* note 2, at 487.
32. *Id.*

able to directly participate in international environmental law, they serve an important role in enforcing MEAs. As environmental issues directly impact many NGOs, NGOs commit substantial resources to solving environmental issues and, in turn, have a large stake in their outcome. Additionally, NGO involvement in international issues brings public awareness, resulting in pressure from the public to their states to comply with existing MEAs.

III. METHODS OF MULTILATERAL ENVIRONMENTAL AGREEMENT DISPUTE RESOLUTION

Currently, there are few established methods to enforce compliance with international law.[33] While almost all MEAs provide methods for settling disputes under the agreements, these methods are rarely used.[34] Unlike individuals who are sanctioned for violating the laws of their nation, states, as sovereign entities, have no higher international authority to answer to when they violate an international law.[35]

A. *Informal Non-Binding Dispute Resolution in Multilateral Environmental Agreements*

Traditionally, MEAs have approached dispute resolution through the use of informal and non-binding mechanisms.[36] Non-binding mechanisms commonly used in MEAs include, among others, negotiation and mediation. In negotiations, the parties to the dispute attempt to reach a settlement that is agreeable to both sides by working with one another.[37] There is little information available on the success of MEA dispute resolution through negotiation because such negotiations generally occur in private and the parties do not disclose the outcome.[38]

In mediations, the parties to the dispute utilize the help of a neutral third party.[39] Here, the third party will promote communication to facilitate settlement of the dispute.[40] As in negotiations, mediations generally occur in private and the parties typically do not disclose the

33. *See* HUNTER ET AL., *supra* note 4, at 372.

34. *See* Rubian & Wagner, *supra* note 3, at 465.

35. *See* HUNTER ET AL., *supra* note 4, at 372.

36. *See* Philippe Sands, *Principles of International Environmental Law, in* HUNTER ET AL., *supra* note 4, at 412.

37. *See id.* at 413.

38. *Id.*

39. *Id.*

40. *Id.*

results of the mediation.[41] Further, "[t]here are few reported examples of mediation being relied upon to resolve environmental disputes."[42]

Although there is little information available on the results of informal non-binding dispute resolution methods used in environmental treaties, what is known is that they are not binding unless the parties to the dispute agree to comply with any settlement reached. Thus, parties to MEAs who employ informal non-binding dispute resolution methods may choose whether to accept or reject proposed settlements.[43] Under these circumstances, parties may never resolve a dispute under a MEA nor be required to comply with the terms of a MEA that they adopt.

B. *Formal Binding Dispute Resolution in Multilateral Environmental Agreements*

Historically, formal binding dispute resolution procedures have not been common practice in international environmental law.[44] This can be attributed to the limited amount of developed binding dispute resolution mechanisms, timeliness and cost of formal proceedings, and unwillingness of states to submit to third-party jurisdiction.[45] Additionally, international law is based primarily on the principle of creating peaceful relationships between states, which is inherently opposed to using litigation to enforce obligations.[46] Although international environmental law has not typically employed formal binding dispute resolution procedures, current widespread noncompliance with MEAs, causing further environmental degradation, evidences the need for new dispute resolution and enforcement procedures.

As an alternative to informal non-binding dispute resolution mechanisms, formal binding dispute resolution methods are becoming increasingly favored to enforce compliance with MEAs.[47] One method of formal binding dispute resolution advanced includes the use of an international tribunal to serve as a permanent court to render binding decisions on those who come before it.[48] However, despite the "calls for its creation, there is as yet no international environmental court, and none is likely to emerge in the foreseeable future."[49]

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41. *Id.*
42. *Id.*
43. *Id.* at 412.
44. *See* HUNTER ET AL., *supra* note 4, at 414.
45. *Id.*
46. *See* Saheed A. Alabi, *Using Litigation to Enforce Climate Obligations under Domestic and International Laws*, 3 CARBON & CLIMATE L. REV. 209, 210–11 (2012).
47. *See* Sands, *supra* note 36, at 414.
48. *See id.* at 412.
49. *Id.*

In place of a singular all-encompassing court, a number of smaller international courts have been established to hear disputes on various topics.[50] Three of the primary international tribunals that have been used to address international environmental disputes include the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), and the World Trade Organization's (WTO) Dispute Settlement Body.[51] Under these circumstances, parties may never resolve a dispute under a MEA nor be required to comply with the terms of a MEA that they adopt.

IV. THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AS A SOLUTION

Despite the obstacles facing the implementation of international environmental agreements, a solution to the problem may already exist. To resolve disputes under the 1982 U.N. Convention on the Law of the Seas (UNCLOS), ITLOS was created.[52] Under UNCLOS, states, including those that are not a party to UNCLOS, as well as non-state parties, may gain access to ITLOS to resolve disputes under MEAs if they agree to do so in another treaty or agreement.[53] Although ITLOS has only been operational since 1994, it has already "established a reputation for the expeditious and efficient management of cases . . . and has made a substantial contribution to the development of international environmental law[,]"[54] making it an appealing option for current and future MEAs to address noncompliance.

A. *Background: The 1982 U.N. Convention on the Law of the Sea*

In response to calls for the international community to address ongoing pollution of the seas and conflicting legal claims over the oceans and the seabed, the Third U.N. Conference on the Law of the

50. *See id.*

51. *See* Philippe Sands, *Litigating Environmental Disputes: Courts, Tribunals and the Progressive Development of International Environmental Law*, Global Forum on International Investment VII (Mar. 27-28, 2008) http://www.oecf.org/investment/globalforum/40311090.pdf [hereinafter Sands, *Litigating Environmental Disputes*].

52. *See* John E. Noyes, *The International Tribunal for the Law of the Sea*, 32 CORNELL INT'L L.J. 109, 111 (1998).

53. *See* U.N. Convention on the Law of the Sea arts. 288(2), 291(2), Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter Law of the Sea Convention]; Statute of the International Tribunal for the Law of the Sea arts. 20–22, Dec. 10, 1982, 1833 U.N.T.S. 561 [hereinafter International Tribunal].

54. Helmut Tuerk, *The Contribution of the International Tribunal for the Law of the Sea to International Law*, 26 PENN. ST. INT'L L. REV. 289, 289 (2007).

Sea convened in 1974.[55] "[The Conference] ended nine years later with the adoption in 1982 of a constitution for the seas – the United Nations Convention on the Law of the Sea."[56]

UNCLOS, also called the "Constitution for the Oceans," contains the first global framework established regarding the seas.[57] It "regulat[es] all ocean space, its uses and its resources."[58] Following the signing of the treaty, then-U.N. Secretary-General described UNCLOS as "[p]ossibly the most significant legal instrument of this century[.]"[59] To date, 164 countries and the European Union have joined UNCLOS.[60]

UNCLOS was designed to be expansive, covering all aspects of the law of the sea in a single document.[61] The drafters of UNCLOS intended it to be universal, gaining the largest amount of support from states possible, and to be ratified only in full, without reservations.[62] To achieve these goals, much that was contained in UNCLOS was, and certain portions continue to be, ambiguous.[63] "In this context[,] binding compulsory dispute settlement becomes the cement which should hold the whole structure together and guarantee its continued acceptability and endurance for all parties. Without such provision[,] the Convention would inevitably be interpreted and applied differently by different states, even when acting entirely in good faith."[64]

Another reason given for the inclusion of a binding compulsory dispute resolution process in UNCLOS was that it would discourage noncompliance because parties to the agreement would seek to avoid the compulsory and binding process by complying with the terms or settling disputes peacefully amongst each other.[65] Thus, UNCLOS

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55. *See The United Nations Convention on the Law of the Sea (A historical perspective)*, U.N. Div. for Ocean Affairs and the Law of the Sea (1998), *available at* http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm#Third%20Conference (last visited Dec. 2, 2013).

56. *Id.*

57. Tuerk, *supra* note 54, at 290.

58. *Id.*

59. *A Historical Perspective*, THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (Apr. 14, 2013), http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm.

60. *See General Information*, THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (Apr. 14, 2013), http://www.itlos.org/index.php?id=8&L=0 [hereinafter *ITLOS General Information*].

61. *See* Alan E. Boyle, *Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction*, 46 INT'L & COMP. L.Q. 37, 38 (Jan. 1997), *available at* http://journals.cambridge.org/action/displayFulltext?type=1&fid=1525012&jid=ILQ&volumeId=46&issueId=01&aid=1525004.

62. *Id.*

63. *Id.*

64. *Id.*

65. *See* Jillaine Seymour, *The International Tribunal for the Law of the Sea: A Great*

created ITLOS as a means of discouraging noncompliance with the treaty and ensuring the uniform interpretation and application of the treaty throughout the world.[66]

B. *Composition of the Tribunal*

ITLOS, composed of twenty-one judges, is currently the largest international judicial body.[67] Each justice must meet very specific qualifications set out in the founding document of ITLOS.[68] "The ITLOS 'as a whole' must represent 'the principal legal systems of the world.'"[69]

Two of the basic qualifications for a judge of ITLOS are that the judge possess a "reputation for fairness and integrity and [are] of recognized competence in the field of the law of the sea."[70] Each judge is elected by the state parties to UNCLOS and serves a term of nine years, renewable upon re-election.[71] Judges also may not participate in certain activities that may interfere with their impartiality.[72] "Judges may not, for example, have a financial interest in operations connected with oceans resources or have acted as legal counsel for one of the parties."[73]

In addition to these qualifications, the judges must be from specific geographical areas so that ITLOS is representative of the main legal systems throughout the world.[74] There can be only one Tribunal member per nation at a time.[75] The states parties "have agreed to elect five judges each from Africa and Asia, four each from Latin America and Caribbean States, as well as Western Europe and Other States, and three from the Group of Eastern European States."[76] Additionally, a party in any case before ITLOS may request that a judge of their nationality hear their case.[77] This distribution of members of the Tribunal ensures that the considerations of developing countries are addressed, different legal systems are represented, and different

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Mistake?, 13 IND. J. GLOBAL LEGAL STUD. 1, 3 (2006) (quoting J.G. MERRILLS, INTERNATIONAL DISPUTE SETTLEMENT 185 (4th ed. 2005)).

66. *See* Tuerk, *supra* note 54, at 290.
67. *Id.* at 194.
68. *See* Noyes, *supra* note 52, at 126.
69. *Id.* at 126–27 (citing Law of the Sea Convention, *supra* note 53, annex VI, art. 2(2)).
70. International Tribunal, *supra* note 53, art. 2.
71. *See* Noyes, *supra* note 52, at 126.
72. *See* International Tribunal, *supra* note 53, art. 7.
73. Noyes, *supra* note 52, at 126.
74. *Id.* at 126–27.
75. *See* Tuerk, *supra* note 54, at 294.
76. *Id.*
77. *See* Noyes, *supra* note 52 at 127.

geographical regions are accounted for.[78]

C. *Compulsory and Binding Nature of the Tribunal*

UNCLOS Part XV provides the process for settlement of disputes.[79] Part XV, article 287, provides that parties to UNCLOS may choose from four specified fora to settle disputes concerning the interpretation and application of UNCLOS.[80] Parties to UNCLOS may choose to resolve disputes using either ITLOS; the United Nation's judicial branch, the International Court of Justice (ICJ); arbitration; or special arbitration before a panel of expert judges "[]in cases involving fisheries, protection of the marine environment, marine scientific research, and navigation[.]"[81] The options provided in Article 287 are the result of "[]states' inability, during UNCLOS[,] to agree on a single third-party forum to which recourse should be had when informal mechanisms failed to resolve a dispute."[82]

The decisions made by any of the four fora available under UNCLOS are legally binding upon the parties to the dispute.[83] As UNCLOS does not allow parties to make reservations when joining and these compulsory dispute settlement procedures are included in UNCLOS, parties must to follow them and are bound to the decisions of the tribunal that settle their dispute.[84] For non-party states and non-state parties who agree, by treaty or otherwise, to submit to the jurisdiction of ITLOS, "[t]he decision of the Tribunal is final and shall be complied with by all the parties to the dispute."[85]

Failure of a party to a dispute before ITLOS to respond or appear does not prevent the proceedings from going forward.[86] Additionally, all decisions issued by ITLOS are final.[87] "However, the Rules of the Tribunal make provision regarding requests for the interpretation or revision of a judgment."[88]

Decisions issued by ITLOS, while binding and final, are only binding upon those parties to the dispute for which the decision is

78. *See* Tuerk, *supra* note 54, at 294.
79. *See* Law of the Sea Convention, *supra* note 53, pt. XV.
80. *See* Noyes, *supra* note 52, at 119.
81. *Id.*
82. *Id.* at 121.
83. *Id.*
84. *Id.*
85. International Tribunal, *supra* note 53, art. 33.
86. *Id.* art. 12.
87. *General Information*, THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (Dec. 7, 2013), http://www.itlos.org/index.php?id=8&L=0%252525255CoOpensinternallinkincurrent window.
88. *Id.*

rendered.[89] Therefore, each dispute heard by ITLOS is decided on the unique facts of each case and will not be guided by previous decisions. Additionally, while decisions issued by ITLOS are not binding outside the parties to the particular dispute, each decision "may be quite significant for the development of the law of the sea in general, and may, in addition, influence the future interpretation of this body of law."[90]

D. *Jurisdiction of the Tribunal*

"[T]he jurisdiction of the Tribunal is relatively unique in comparison to other international judicial bodies."[91] ITLOS was primarily created to hear claims brought by state parties concerning the interpretation and application of UNCLOS.[92] "In the cases submitted to the Tribunal to date the following matters have figured prominently: prompt release of vessels and crews under article 292 of the Convention, coastal State jurisdiction in its maritime zones, freedom of navigation, hot pursuit, marine environment, flags of convenience and conservation of fish stocks."[93] ITLOS may also hear disputes between parties that are not state-members of UNCLOS if they submit to the jurisdiction of ITLOS.[94]

States that are not parties to UNCLOS may submit to the jurisdiction of ITLOS by agreement in a treaty or other agreement.[95] Article 22 of the ITLOS Statute also specifically states that parties to a treaty that is already in force may submit to ITLOS jurisdiction.[96] To date, at least ten multilateral agreements have conferred jurisdiction to ITLOS.[97]

ITLOS' jurisdiction also extends beyond state disputes involving private parties who agree to submit to the jurisdiction of ITLOS.[98] This

89. *See* Noyes, *supra* note 52, at 120.

90. Tuerk, *supra* note 54, at 294–95.

91. John Shamsey, *ITLOS vs. Goliath: The International Tribunal for the Law of the Sea Stands Tall With the Appellate Body in the Chilean-EU Swordfish Dispute*, 12 TRANSNAT'L L. & CONTEMP. PROBS. 513, 515 (2002).

92. *See* Noyes, *supra* note 52, at 130.

93. *General Information*, INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (Dec. 7, 2013), http://www.itlos.org/index.php?id=8&L=0%252525255CoOpensinternallinkincurrentwindow.

94. *Id.*

95. *Id.*

96. *See* International Tribunal, *supra* note 53, art. 22.

97. *See Jurisdiction*, INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA, http://www.itlos.org/index.php?id=11 (last visited Dec. 5, 2013).

98. Noyes, *supra* note 52, at 130. "[A] literal reading of the Statute of the ITLOS might allow the ITLOS to hear disputes involving private parties that are submitted pursuant to agreements conferring jurisdiction on the Tribunal." *Id.*

is one of the most significant features of ITLOS.[99] Article 20 of the statute governing ITLOS specifically allows access to ITLOS to state parties and "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."[100] This is particularly beneficial in the field of international environmental law because it would allow NGOs to participate in matters that they are involved.[101] NGO participation in international environmental issues may also shed light on issues of noncompliance to the public, which, in turn, would pressure states to comply with MEAs.[102]

In addition, "[i]ntergovernmental organizations may submit statements to the ITLOS as amici curiae."[103] Under Article 289 of UNCLOS, ITLOS or the parties to the dispute may also seek the advice of experts regarding the case at issue.[104] "International non-governmental organizations aimed at the protection of the marine environment do not have access to the ITLOS as parties or amici curiae."[105] However, under Article 289, these organizations can potentially participate as experts.[106]

E. *Ability of the Tribunal to Issue Provisional Measures*

Under Article 25 of UNCLOS, ITLOS has the power to issue provisional measures.[107] UNCLOS Article 290 specifies that where a dispute has been submitted to ITLOS, and ITLOS finds that it has *prima facie* jurisdiction to hear the dispute, the "tribunal may prescribe any provisional measure which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision."[108] Such provisional measures are also binding.[109]

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99. *See* Shamsey, *supra* note 91, at 516.

100. International Tribunal, *supra* note 53, art. 20.

101. *See* Jutta Brunnee, *Enforcement Mechanisms in International Law and International Environmental Law*, http://www.law.utoronto.ca/documents/brunnee/BrunneeEnforcementMechanismsInt_lLaw.pdf (last visited Dec. 8, 2013).

102. *Id.*

103. CATHRIN ZENGERLING, GREENING INTERNATIONAL JURISPRUDENCE: ENVIRONMENTAL NGOS BEFORE INTERNATIONAL COURTS, TRIBUNALS, AND COMPLIANCE COMMITTEES 230 (2013).

104. *See id. See also* International Tribunal, *supra* note 53, art. 289.

105. *Id.* at 230.

106. *See id.*

107. *See* International Tribunal, *supra* note 53, art. 25.

108. Law of the Sea Convention, *supra* note 53, art. 290.

109. *See id. See also* Noyes, *supra* note 52 at 135 ("It is beyond cavil that provisional measures are binding.").

ITLOS has discretion to revoke any provisional measures imposed only when "the circumstances justifying [the provisional measures] have changed or ceased to exist."[110]

To date, ITLOS has utilized provisional measures in five cases.[111] In *M/V Saiga (No. 2)*, a case where ITLOS issued an order prescribing provisional measures, Judge Laing wrote a separate opinion explaining the factors to be used in determining whether to prescribe a provisional measure:

> [I]t is useful to recall the discretionary and equitable nature of the institution of provisional measures. This suggests that urgency should always be borne in mind as an aspect of any possible "circumstance." But equally or alternatively should there be borne in mind such aspects, if they exist as (1) the wrong has already occurred or cannot be compensated or monetarily repaired . . . , (2) the certainty that the feared consequence will occur unless the Tribunal intervenes, (3) the seriousness of the threat, (4) the right being preserved has unique or particular special value and (5) the magnitude of the underlying global public order value, e.g. such possible *jus cogens* values as global peace and security or environmental protection.[112]

The factors enunciated by Judge Laing in *M/V Saiga (No. 2)* are particularly favorable in the context of environmental disputes. Environmental harm is irreparable and unquantifiable.[113] Thus, the ability of ITLOS to impose provisional measures using these factors can act to prevent environmental harm that would be unable to be repaired or compensated for.

F. *Applicable Law of the Tribunal*

When deciding disputes, ITLOS must apply the laws of UNCLOS "and other rules of international law not incompatible with [UNCLOS]."[114] Certain portions of UNCLOS "incorporate by reference 'generally accepted international rules and standards' of the International Maritime Organization."[115] UNCLOS also incorporates by

110. Law of the Sea Convention, *supra* note 53, art. 290.

111. *See* List of Cases, INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (last visited Dec. 7, 2013), http://www.itlos.org/index.php?id=35&L=0%252525255CoOpensinternallinkincurr entwindow.

112. M/V Saiga (No. 2) (St. Vincent v. Guinea), Case No. 2, Order of Mar. 11, 1998, 37 I.L.M. 1202, 1224.

113. Berwick, *supra* note 14, at 265.

114. International Tribunal, *supra* note 53, art. 293.

115. Noyes, *supra* note 52, at 124.

reference international law that is not directly related to the law of the sea.[116]

Where non-state parties agree to submit to the jurisdiction of ITLOS, they may also specify other sources of law for ITLOS to apply.[117] For example, the 1995 Straddling Stocks Agreement provides that disputes under the agreement be resolved according to the dispute settlement provisions of UNCLOS.[118] Under the Straddling Stocks Agreement, the laws of UNCLOS and those included in UNCLOS apply, as well as "any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law[.]"[119]

G. *Enforcing MEAs Through the Tribunal*

Although ITLOS was created as the primary judicial organ for enforcing UNCLOS, it was granted jurisdiction much broader than just hearing claims brought under UNCLOS.[120] Since ITLOS came into force in 1994, it has heard few cases but has nevertheless established itself as an efficient and competent international tribunal.[121] The success of ITLOS can be attributed to its many unique features, which could also provide a method of improving compliance with existing and future MEAs.

Portions of UNCLOS, like many MEAs, were drafted ambiguously in order to gain the support of the largest amount of states possible.[122] To interpret ambiguous portions and enforce an agreement, binding compulsory dispute settlement procedures work to hold the agreement together and maintain its uniform interpretation.[123] Additionally, the use of binding and compulsory dispute resolution methods, such as ITLOS, serves as a deterrent for noncompliance as parties generally wish to avoid compulsory binding dispute resolution.[124]

ITLOS is currently the largest international judicial body.[125] Its

116. *See id.*

117. *See id.*

118. *Id.*

119. *Id.* (quoting Agreement for the Implementation of the Provisions of the U.N. 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, opened for signature Dec. 4, 1995, U.N. Doc. A/CONF.167/37, 34 I.L.M. 1542 (1995)).

120. *See id.* at 130.

121. *See* Tuerk, *supra* note 54, at 289.

122. *See* Noyes, *supra* note 52, at 38.

123. *Id.*

124. *See* Seymour, *supra* note 65, at 3.

125. *See* Tuerk, *supra* note 54, at 290.

composition is specifically designed to "represent 'the principal legal systems of the world.'"[126] Further, a party in any case before ITLOS may request that a judge of their nationality hear their case.[127] This feature makes ITLOS especially capable of hearing international disputes and ensures that the parties before ITLOS are understood because someone of their own nationality can participate at the parties' request.

All decisions issued by ITLOS are binding and final upon the parties to the dispute.[128] This feature is also crucial in hearing disputes under MEAs as it allows ITLOS to decide each case based on the particular facts of that case. Further, the more decisions issued by ITLOS regarding disputes under MEAs would serve to clarify and help develop international law, encouraging compliance through understanding.[129]

The most important feature of ITLOS in enforcing MEAs is its broad jurisdiction. ITLOS may hear disputes between state parties to UNCLOS, as well as non-state parties, including private parties, provided they submit to such jurisdiction.[130] Participation of entities such as NGOs in cases of MEA noncompliance serves to bring public attention to the issue, in turn, pressuring states to comply.[131]

Another feature that makes ITLOS ideal for handling disputes under MEAs is its ability to issue binding provisional measures.[132] In deciding whether to issue provisional measures, ITLOS specifically considers the security of the environment.[133] This is crucial in the context of MEA enforcement as disputes arising under MEAs could likely involve environmental harm that is irreparable.[134]

ITLOS applies the laws of UNCLOS as well as other generally accepted international rules and standards.[135] Additionally, parties to disputes under MEAs who submit jurisdiction to ITLOS have the power to specify any particular law they wish to govern the dispute.[136] Thus, parties to disputes under MEAs in a specific or narrow area of the law may choose for ITLOS to apply the law of that area, provided that it

126. Noyes, *supra* note 52, at 126–27 (citing Law of the Sea Convention, *supra* note 53, annex VI, art. 2(2)).

127. *See id.* at 127.

128. *See* International Tribunal, *supra* note 53, art. 33.

129. *See* Tuerk, *supra* note 54, at 294–95.

130. *See* Noyes, *supra* note 52, at 130.

131. *See* Brunnee, *supra* note 101, at 4.

132. *See* International Tribunal, *supra* note 53, art. 25.

133. *See* M/V Saiga (No. 2) (St. Vincent v. Ginea), case No. 2, Order of Mar. 11, 1998, 37 I.L.M. 1202, 1224.

134. *See* Berwick, *supra* note 14, at 265.

135. *See* Noyes, *supra* note 52, at 124.

136. *See id.*

does not conflict with UNCLOS.[137]

V. THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA IN COMPARISON

With the recent rise in MEAs, there has also be a rise in the number of international fora in which environmental disputes may be brought.[138] Originally, the ICJ was the most prominent international tribunal.[139] However, since the ICJ was established in 1946, "it has been joined by a large number of other international judicial and quasi-judicial bodies."[140] Two of the largest international tribunals to join the ICJ include ITLOS and the WTO's Dispute Settlement Body.[141]

A. *The International Court of Justice*

The ICJ is the primary judicial organ of the United Nations and has general authority over any international law question.[142] The ICJ is composed of fifteen judges, elected for renewable terms of nine years.[143] "The judges are 'independent' and 'represent[]. . .the main forms of civilization and. . .the principal legal systems of the world.'"[144]

Under the broad jurisdiction of the ICJ, disputing parties under MEAs may seek formal dispute resolution with the ICJ either by agreement for the specific dispute or categorically.[145] The ICJ may also issue provisional measures where it sees fit.[146] State parties may choose to submit to the jurisdiction of the ICJ by agreement.[147] Hundreds of bilateral and multilateral treaties, including environmental agreements, grant dispute resolution authority to the ICJ.[148]

The jurisdiction of the ICJ, while very broad, is particularly limited

137. *Id.*

138. *See* Sands, *Litigating Environmental Disputes*, *supra* note 51, at 5.

139. *Id.*

140. *Id.*

141. *Id.*

142. *See* David Scott Rubinton, *Toward a Recognition of the Rights of Non-States in International Environmental Law*, 9 PACE ENVTL. L. REV. 475, 479 (1992), *available at* http://digitalcommons.pace.edu/pelr/vol9/iss2/3.

143. *See* Mark L. Movsesian, *Judging International Judgments*, 48 VA. J. INT'L L. 65, 73 (2007).

144. *Id.* (citing Statute of the International Court of Justice, art. 9, June 26, 1945, 59 Stat. 1031, T.S. No. 993).

145. *Id.* at 73–74.

146. *See* Statute of the International Court of Justice, art. 41, June 26, 1945, 59 Stat. 1031, T.S. No. 993.

147. Movsesian, *supra* note 143, at 74.

148. *Id.*

in the area of international environmental law because only states may bring claims before it.[149] "Only states may appear as parties before the Court."[150] A private party may only have their claim brought to the ICJ if the party's government brings the claim on their behalf under the theory of "diplomatic protection."[151] Under this theory, the state would argue that the injury to the private party would result in injury to the state itself.[152]

The ICJ applies international law including treaties and customary law in deciding disputes.[153] Decisions rendered by the ICJ are binding but only bind those parties to the dispute.[154] "If a losing party fails to comply, the prevailing party may apply to the Security Council for assistance; the Council 'may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.'"[155] Despite the authority of the Security Council to enter remedial measures against parties who fail to comply with decisions issued by ICJ, requests for assistance from the Security Council are rare and the Security Council has yet to enter such remedial measures.[156]

Although the ICJ has broad general jurisdiction over international matters, in 1993, they established the Environmental Chamber of the International Court of Justice ("Environmental Chamber").[157] In 2006, the Environmental Chamber had been in existence for 13 years and had yet to hear a case.[158] Consequently, the ICJ decided to discontinue the Environmental Chamber in 2006.[159] Although the Environmental Chamber is no longer in effect, the general authority of the ICJ does continue to extend to international environmental issues.[160] However, even with this general authority, few ICJ decisions address significant issues of international environmental law.[161]

The volume of international law has risen dramatically in recent years.[162] As a result, the ICJ's docket has become increasingly

149. *See* HUNTER ET AL., *supra* note 4, at 414.
150. Movsesian, *supra* note 143, at 73.
151. *See* Rubinton, *supra* note 142, at 480–81.
152. *See id.* at 481.
153. Movsesian, *supra* note 143, at 74.
154. *Id.*
155. *Id.* at 75 (quoting U.N. Charter art. 94, para. 2).
156. *Id.*
157. *See* Sands, *Litigating International Disputes*, *supra* note 51, at 6–7.
158. *See Chambers and Committees*, INTERNATIONAL COURT OF JUSTICE, http://www.icj-cij.org/court/index.php?p1=1&p2=4 (last visited Dec. 8, 2013)
159. *See id.*
160. *See* Sands, *Litigating International Disputes, supra* note 51, at 5.
161. *See* HUNTER ET AL., *supra* note 4, at 414.
162. *See* Rubian & Wagner, *supra* note 3, at 463.

crowded.[163] The ICJ's typical procedure "takes two years to file an application, twenty to thirty months for oral hearing and four to five months for judgments to be issues."[164] This lengthy process coupled with a lack of resources to meet the needs of all international disputants creates substantial barriers to resolve disputes arising under MEAs. This poses a particular problem in the context of environmental law because of the time-sensitive nature of environmental issues and the lack of adequate remedies for nearly all environmental damage.[165]

B. *The Tribunal and the International Court of Justice in Comparison*

ITLOS has received criticism as being an unnecessary infringement on the role of the ICJ.[166] This argument is based on the assertion that the law of the sea, as a large portion of international law, should be heard by the ICJ to preserve the unity of international law.[167] However, there has been no evidence of such a split in interpreting international law[168] and ITLOS appears to be better suited to hear disputes under MEAs because of it its unique features.

Where judicial fora exist separately without a singular governing authority, as is the case with ITLOS and the ICJ, each tribunal may interpret the law differently.[169] Fragmentation in international law among various tribunals may produce confusion when interpreting and applying the law.[170] To date, however, there has not been a divergence in interpretation of international law.[171] It is generally accepted that the opinions of the ICJ are respected among other international tribunals and that other tribunals will work to develop the law in a cohesive manner.[172] Further, UNCLOS provides that the law to be applied by ITLOS, other than the laws of UNCLOS, includes any rules of international law that are not in conflict with UNCLOS.[173] Thus, so long as ITLOS continues to decide cases in line with established

163. *See* Samuel J. Zeidman, *Sittin' on the Dhaka the Bay: The Dispute Between Bangladesh and Myanmar and its Implications for the International Tribunal for the Law of the Sea*, 50 COLUM. J. TRANSNAT'L L. 442, 478 (2012).

164. Sang Wook Daniel Han, *Decentralized Proliferation of International Judicial Bodies*, 16 J. TRANSNATIONAL L. & POL'Y 101, 105 (2006).

165. *See* Berwick, *supra* note 14, at 265.

166. *See* Boyle, *supra* note 61, at 37.

167. *Id.*

168. *See* Rosemary Rayfuse, The Future of Compulsory Dispute Settlement Under the Law of the Sea Convention, 36 VICTORIA U. WELLINGTON L. REV. 683, 687 (2005).

169. *See* Han, *supra* note 164, at 111.

170. *See generally id.*

171. *See* Rayfuse, *supra* note 168, at 686.

172. *Id.*

173. *See ITLOS General Information, supra* note 60.

international law, decisions issued by ITLOS will not infringe upon the jurisdiction of the ICJ, but rather, alleviate the caseload of the ICJ.

ITLOS, in comparison to the ICJ, is "composed of a body of [twenty-one] independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the seas."[174] The jurisdiction of ITLOS is not as broad as that of the ICJ, thereby limiting the issues it may hear.[175] Thus, the expertise and number of judges on ITLOS allow a more efficient and accessible system for dispute resolution.[176]

The rules governing ITLOS specifically direct that "proceedings before the Tribunal . . . be conducted without unnecessary delay or expense."[177] For normal pleadings, the maximum time ITLOS has taken for any dispute is just over one year.[178] This is a stark contrast to the two-year period it takes to merely file an application with the ICJ.[179] While ITLOS has only been in operation for a short period of time, it has proven that its operation is effective.[180] In 2000, former-U.N. Secretary-General Kofi Annan's stated that ITLOS has "built a reputation among international lawyers as a modern court that can respond quickly."[181]

Decisions issued by both ITLOS and the ICJ are binding upon the parties to the dispute for which the decision is entered. Additionally, both fora may enter provisional measures where they deem necessary. While there are several similarities between the two such as these, one of their primary differences is the ability to hear claims brought by non-state parties.[182]

In contrast to the states-only jurisdiction of the ICJ, ITLOS is open to all state parties of UNCLOS as well as non-state parties and other entities including private parties, so long as they agree to be subject to

174. International Tribunal, *supra* note 53, art. 2.

175. *See* Tuerk, *supra* note 54, at 294–95.

176. *See id.*

177. *Rules of the Tribunal,* INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA, art. 49 (Mar. 17, 2009), http://www.itlos.org/fileadmin/itlos/documents/basic_texts/Itlos_8_E_17_03_09.pdf.

178. *See* Shamsey, *supra* note 91, at 517.

179. *See* Han, *supra* note 164, at 105.

180. *See* Zeidman, *supra* note 163, at 475 (citing Press Release, International Tribunal for the Law of the Sea, First Five Years of the International Tribunal for the Law of the Sea, ITLOS/Press 58 (Oct. 18, 2001), *available at* http://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_No.58. pdf).

181. *Id.*

182. *See International Tribunal for the Law of the Sea,* PROJECT ON INTERNATIONAL COURTS AND TRIBUNALS, http://www.pict-pcti.org/courts/ITLOS.html (last visited Dec. 8, 2013).

ITLOS' jurisdiction.[183] This also extends standing under ITLOS to agreements between states and non-state entities.[184] Additionally, ITLOS can hear any dispute where the interpretation of an international agreement is related to UNCLOS.[185]

C. *The World Trade Organization's Dispute Settlement Body*

The WTO is the "primary international body dealing with intergovernmental trade relations."[186] The WTO regulates trade between nations.[187] The WTO's goal is to promote free trade by lowering trade barriers.[188] Trade measures are frequently used as a method of enforcing MEAs, making the WTO Dispute Settlement Body another potential forum for parties to address disputes arising under MEAs.[189]

"Trade friction is channeled into the WTO's dispute settlement process where the focus is on interpreting agreements and commitments, and how to ensure that countries' trade policies conform with them."[190] Under the WTO's dispute settlement process, disputing parties are first encouraged to participate in informal negotiations to attempt to resolve the dispute.[191] If these informal negotiations do not reach a settlement, a Dispute Panel is formed to litigate the matter.[192] After the Panel renders its decision, the losing party may appeal, and following appeal, the decision automatically becomes final.[193] The WTO seeks timely resolution of disputes and requires cases be decided within six months.[194] This method of dispute resolution has allowed the WTO to handle large numbers of disputes quickly and efficiently.[195]

In deciding disputes, the WTO Dispute Settlement Body follows the body of legal rules developed by the WTO.[196] Additionally, the Dispute

183. *See* International Tribunal, *supra* note 53, art. 20.

184. *See* Shamsey, *supra* note 91, at 516.

185. *See id.*

186. Jeffrey Waincymer, *Transparency of Dispute Settlement Within the World Trade Organization,* 24 MELB. U. L. REV. 797, 798 (2000).

187. *See The WTO . . . In brief,* The World Trade Organization, http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr00_e.htm (last visited Dec. 8, 2013) [hereinafter *WTO in Brief*].

188. *Id.*

189. Brian K. Myers, *Trade Measures and the Environment: Can the WTO and UNCLOS be Reconciled?*, 23 UCLA J. ENVTL. L. & POL'Y 37, 37 (2005).

190. *WTO in Brief, supra* note 187.

191. *See* Myers, *supra* note 189, at 42.

192. *See id.*

193. *See id.*

194. *See* Han, *supra* note 164, at 105.

195. *See* HUNTER ET AL., *supra* note 4, at 1217.

196. *See* Pascal Lamy, *The Place of the WTO and its Law in the International Legal Order*, 17 EUR. J. INT'L L. 969, 972–73 (2006).

Settlement Body has the sole authority to establish the panels that will hear disputes.[197] The Dispute Settlement Body also has the authority to monitor compliance with its decisions and "has the power to authorize retaliation when a country does not comply with a ruling."[198]

With respect to the WTO and the environment, the preamble to the agreement establishing the WTO expresses that parties to the WTO should pursue the promotion and expansion of free trade "while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment[.]"[199] Despite the WTO's efficient dispute resolution procedures and clearly stated interest in protecting the environment, the environmental community expresses very negative views on the WTO.[200] There are several reasons for the environmental community viewpoint.

First, WTO's dispute settlement panels are composed of individuals, operating in their own capacity, who are selected for their work in the trade community.[201] Thus, the panelists are not qualified to address issues that arise affecting the environment.[202] Additionally, environmentalists argue that because the panelists do not have environmental knowledge, they cannot appreciate the environmental factors implicated in international trade and do not give these factors accurate consideration.[203] The WTO's focus is on trade and, accordingly, the WTO has drawn very strong lines in favor of trade when there have been disputes concerning the environmental and trade practices.[204]

Second, the WTO dispute settlement procedures allow a minimal amount of non-state participation, only allowing non-governmental organizations to send in written submissions regarding disputes between member states.[205] Currently, non-state actors cannot participate directly in WTO dispute resolution.[206] The WTO dispute resolution process

197. *See Settling Disputes,* THE WORLD TRADE ORGANIZATION, http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap3_e.pdf (last visited Dec. 8, 2013) [hereinafter *Settling Disputes*].

198. *Id.* at 56.

199. HUNTER ET AL., *supra* note 4, at 1213.

200. *See* Winifried Lang, *WTO Dispute Settlement: What The Future Holds*, *in* HUNTER ET AL., *supra* note 4, at 1219.

201. *See* HUNTER ET AL., *supra* note 4, at 1218.

202. *See id.*

203. *Id.*

204. *Id.*

205. Han, *supra* note 164, at 106 n.33 (citing Appellate Body Report, United States-Import Prohibition of Certain Shrimp and Shrimp Products, 2–7, WT/DS58/R (Oct. 22, 2001)).

206. *See WTO in Brief, supra* note 187.

favors governments heavily in this way.[207]

Lastly, and perhaps the largest argument against using WTO dispute settlement procedures for environmental disputes, is that as an organization centered on free trade, the WTO "will understandably try to recognize an argument for free trade in virtually any situation."[208] The core principle of the WTO is to prevent states from discriminating against other countries in favor of domestic products or another country's products.[209] This prevents countries from imposing their own environmental standards on goods they import such as a standard of environmentally safe production methods because this qualifies as discrimination between states under WTO.[210]

D. *The Tribunal and the World Trade Organization's Dispute Settlement Body in Comparison*

The WTO's Dispute Settlement Body has many attractive features including timely and efficient dispute resolution, appellate processes, and the power to monitor and enforce compliance with its decisions.[211] However, the features of the WTO are designed to promote free trade and not the environment.[212] This inherently makes the WTO's Dispute Settlement Body incompatible with the purpose of MEAs.

Panelists on the WTO's Dispute settlement body are experts in the field of trade.[213] Comparatively, judges on ITLOS are all experts in the field of the environment as it relates to the law of the sea.[214] Further, ITLOS may enlist the help of outside experts to assist in areas it is unfamiliar with.[215]

The WTO's dispute settlement procedures do not allow non-state actors to participate directly in WTO dispute resolution.[216] In contrast, ITLOS extends jurisdiction to non-state parties where they agree and allows non-states to submit briefs as amicus curia to the court.[217] This is an important feature of international environmental law as NGO participation promotes enforceability of MEAs and in turn, environmental protection.[218]

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207. *See* Lang, *supra* note 200, *in* HUNTER ET AL., *supra* note 4, at 1220.
208. Shamsey, *supra* note 91, at 519.
209. *See* HUNTER ET AL., *supra* note 4, at 1212.
210. *See id.*
211. *See Settling Disputes, supra* note 197, at 56.
212. *See* Shamsey, *supra* note 91, at 520.
213. *See* HUNTER ET AL., *supra* note 4, at 1218.
214. *See* International Tribunal, *supra* note 53, art. 2.
215. *See* Law of the Sea Convention, *supra* note 53, art. 289.
216. *See* Han, *supra* note 164, at 105–06.
217. *See* Noyes, *supra* note 52, at 130.
218. *See* Brunnee, *supra* note 101.

Lastly, and most importantly, the primary focus of the WTO is to liberalize trade.[219] Thus, when a dispute concerns trade liberalization at the cost of environmental harm, the decision of the WTO Dispute Settlement Body will fall on the side of trade liberalization.[220] In comparison, ITLOS is wholly centered on environmental protection and is instructed to consider all potential environmental issues when issuing provisional measures and final decisions.[221]

VI. CONCLUSION

Over the last several decades, there has been a dramatic increase in the number of MEAs entered into to address rising global pollution.[222] Despite the amount of MEAs currently in place, the problems that the treaties were created to address have yet to be solved.[223] Current MEAs are not being complied with and "are one of the leading causes for the continued degradation of the environment."[224] As treaty-based regimes are the most effective way to deal with international environmental issues, a solution to the problem of MEA enforcement must be found.[225]

There are many reasons for the lack of enforcement and compliance with MEAs.[226] Two of the primary obstacles to the enforcement of MEAs includes treaty congestion and collective management.[227] Additionally, the lack of compliance can be attributed to the fact that most MEAs have only informal and non-binding dispute resolution procedures.[228]

Historically, informal and non-binding dispute resolution procedures have been the main form of dispute resolution utilized in international environmental agreements.[229] However, widespread noncompliance with MEAs, leading to further environmental degradation, has shown that new dispute resolution procedures and methods of enforcement

219. *See* Shamsey, *supra* note 91, at 519.

220. *Id.*

221. *See* Law of the Sea Convention, *supra* note 53. "*Recognizing* the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment[.]" *Id.*

222. *See* Rubian & Wagner, *supra* note 3, at 463.

223. *See* Kelly, *supra* note 2, at 448.

224. *See* Rubian & Wagner, *supra* note 3, at 463.

225. *See* Kelly, *supra* note 2, at 448.

226. *See* HUNTER ET AL., *supra* note 4, at 1218.

227. *See* Sands, *supra* note 36, at 414.

228. *See* Palmer, *supra* note 11.

229. *See* Kelly, *supra* note 2.

must be found. To solve this problem, formal and binding dispute resolution procedures in MEAs are becoming increasingly favored in the international community.[230]

"ITLOS may become the long awaited environment-friendly international forum for the future."[231] Since its formation in 1997, ITLOS has established itself as a modern court providing expeditious and efficient resolution of disputes.[232] ITLOS' compulsory binding dispute settlement procedures resolve disputes using expert judges and also provide a deterrent to noncompliance.[233]

The composition of the Tribunal ensures that all global regions and judicial systems are represented to ensure fairness among the disputing parties.[234] Additionally, ITLOS has proven that it is efficient, timely, and cost-effective.[235] While ITLOS has only heard twenty-one cases as of today, ITLOS is relatively new and has received great praise in its short existence.[236] States have also shown a preference for dispute resolution under ITLOS by incorporating it into other treaties.[237]

The ICJ, WTO dispute settlement body, and ITLOS have all been utilized to resolve international environmental disputes.[238] Of these three, the structure of ITLOS is the most suitable to address international environmental law. In the context of environmental law, it is crucial for issues to be addressed as soon as possible to avoid potential permanent and irreparable environmental harm.[239] ITLOS, as the largest international tribunal consisting of twenty-one judges with expertise in areas on environmental law, provides a more efficient and accessible system for resolving disputes under MEAs.[240] Another feature that separates ITLOS from the ICJ and WTO is ITLOS' allowance of non-state actors to participate in dispute resolution.[241]

In conclusion, to address the problems caused by noncompliance with MEAs, stronger enforcement mechanisms must be implemented. Traditional non-binding dispute resolution methods used in international environmental agreements were created based on the principles of peace

230. *See* Sands, *supra* note 36, at 412.

231. Shamsey, *supra* note 91, at 514.

232. *See* Tuerk, *supra* note 54, at 315.

233. *See* Seymour, *supra* note 65, at 185.

234. *See* Tuerk, *supra* note 54, at 294.

235. *See* Zeidman, *supra* note 163, at 475.

236. *See Cases*, International Tribunal for the Law of the Sea (Apr. 15, 2013), *at* http://www.itlos.org/index.php?id=10&L=0.

237. *See* Andrew Serdy, *The Paradoxical Success of UNCLOS Part XV: A Half-Hearted Reply to Rosemary Rayfuse*, 36 VICTORIA U. WELLINGTON L. REV. 713, 717 (2005).

238. *See* Sands, *Litigating Environmental Disputes, supra* note 51.

239. *See* Berwick, *supra* note 14, at 265.

240. *See* Tuerk, *supra* note 54, at 294–95.

241. *See* Noyes, *supra* note 52, at 130.

that MEAs are built upon. However, non-binding dispute resolution methods have not been effective in implementing and enforcing MEAs. Thus, to achieve compliance and enforce existing and future MEAs, parties should consider submitting jurisdiction to ITLOS. ITLOS is currently being under-utilized but has the potential to provide valuable resources through its proven expertise and experience in international environmental disputes. If ITLOS were to be further utilized it would allow for more disputes under MEAs to be solved and for further development of international environmental law, in turn, making laws clearer and easier to follow.

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