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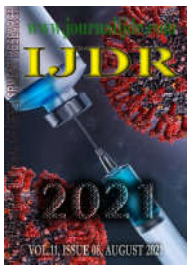

RESEARCH ARTICLE OPEN ACCESS

JURISDICCIÓN DE LA CORTE INTERNACIONAL DEL DERECHO DEL MAR EN LA PROTECCIÓN DEL MEDIO AMBIENTE MARÍTIMO

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ABSTRACT

This paper aims to verify the effectiveness of the jurisdiction of the International Tribunal for the Law of the Sea in protecting the marine environment. It is a qualitative, descriptive and explanatory research, with a deductive method and bibliographical research technique. The work of the International Tribunal for the Law of the Sea has been examined from the point of view of the effectiveness of the procedural procedures established in the United Nations Convention on the Law of the Sea (UNCLOS), as well as in other dispute settlement mechanisms provided for in that Convention. Thus, the effectiveness of the procedure for marine environment protection at the International Tribunal for the Law of the Sea has been demonstrated.

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INTRODUCTION

The sea has always figured as a protagonist in the commercial and economic development of the world. Initially, there was no concern about the ways it should be explored, due to the unawareness of the minerals and natural resources that exist there. Once aware of these riches, as well as of the possibility of exploiting them, mainly by countries with technology, the United Nations (UN) proposed to its member States the preparation of an international document that could provide for the International Law of the Sea. Thus, after several years of discussions, in December 1982, the United Nations Convention on the Law of the Sea (UNCLOS/Montego Bay Convention) came into force. This convention defined and codified terms of International Law, such as exclusive economic zone, continental shelf, Area and territorial sea. However, the greatest innovation of this international document was the establishment of the International Tribunal for the Law of the Sea (ITLOS) as a means of dispute settlement on questions related to the Law of the Sea. Since then, much has been discussed about the effectiveness of the procedure for protecting the marine environment under the ITLOS. This discussion is due to the fact that the countries, when striving for world peace and security, have selected other means of dispute settlement also provided for in the Convention, rather than ITLOS, in the vast majority of cases. That said, it is asked whether the decisions handed down by the ITLOS are effective, both externally and internally, for protecting the marine environment. In turn, the aim is to analyze the international standardization that regulates the international dispute settlement system in the Montego Bay Convention, its institutes and jurisdiction. To check the prominent role of ITLOS in protecting the Law of the Sea, a qualitative, descriptive and explanatory research will be carried out. The deductive method will be used, as well as bibliographic and documentary research as techniques. The theoretical framework adopted was Zanella's work (2017). The present work is divided into four parts, the first of which is a brief historical overview of the emergence of the Law of the sea. The second part deals with the dispute settlement systems provided for in the Montego Bay Convention. The third section is a study of the ITLOS, addressing such issues as its training, competence and jurisdiction, as well as the legal process of suits under the scope of that tribunal. Finally, ITLOS effectiveness in issues related to the protection of the marine environment will be analyzed.

The development of the international law of the sea: The oceans have, since antiquity, played a prominent role in the global economy, whether due to its natural resources or for being considered as

a means of circulation of goods, essential for the development of trade and people's movement around the world. For many years it was discussed if the oceans should be free for everyone to use, or if there should be rules for its use and peaceful and sustainable exploitation, respectively. In view of the need to codify an international Law of the sea, the UN called on its member states to participate in this effort, organizing its first International Conference on the Law of the Sea in Geneva in 1958, which was attended by 86 countries.

At this Conference the following Treaties were drawn up: Convention on the Territorial Sea and the Contiguous Zone, Convention on the High Seas, Convention on Fishing and Conservation of Living Resources of the High Seas, and Convention on the Continental Shelf, and an Optional Protocol that provides for obligatory peaceful settlement of disputes. In 1960 in Geneva, the UN held the second Conference on the law of the Sea, attended by 88 countries. This time, the Conference did not result in any new agreements. The third UN Conference on the Law of the sea, which started in 1973 in New York City in the United States, began a process of discussion that culminated in the approval of the text of the United Nations Convention on the Law of the Sea (Convemar/Montego Bay Convention/UNCLOS) in 1982, in the city of Montego Bay, Jamaica[1]. The ratification of this Convention by at least 60 countries was a *sine qua non* for its entry into force. This time, the Convention came into force on November 16, 1994.

The dispute settlement system in the montego bay convention: The Montego Bay Convention established dispute settlement mechanisms concerning the use of the sea, as well as concerning seabed exploitation. These mechanisms are provided for in Part XV of the Convention. According to Zanella, "Part XV can be divided into two main groups: one with non-mandatory procedures and the other with procedures that end with binding decisions" (ZANELLA, 2017, p. 583). Although the Convention deals with the means of settling disputes, it is important to emphasize that the use of tribunals to settle disputes is the exception. Because of their commitments to the International Society, the States should seek peaceful solutions and, sovereignly, select the dispute settlement means that best suits them, according to provisions of art. 281 of the Convention:

> Art. 281 of UNCLOS. […] If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed to seek settlement of the dispute by a peaceful means of their own choice, the procedures provided for in this Part apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure. (BRASIL,1990).

The dispute settlement mechanisms are provided for in arts. 284 and 287 and Part XV of the Convention, and the States may choose between the following:

> Art. 284 of UNCLOS
> Conciliation
> 1. A State Party which is a party to a dispute concerning the interpretation or application of this Convention may invite the other party or parties to submit the dispute to conciliation in accordance with the procedure under Annex V, section 1, or another conciliation procedure. […]
> Art. 287 of UNCLOS
> Choice of procedure
> When signing, 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. (BRASIL, 1990)

However, with conflicts over the law of the sea, art. 283 of the Convention provides that "When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means" (BRASIL, 1990). Thus, it is not necessary for this exchange of views to deal with the solution of the question raised. That is, it can exist only for the parties to choose the means of settling the dispute that they will adopt. On the other hand, art. 283, paragraph 2, establishes that the exchange of views can occur during the entire dispute settlement process or even when this process ends. It reads:

> Art. 283 of UNCLOS. […] 2 - The parties shall also proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement. (BRASIL, 1990) .

Art. 282 further provides that if States have chosen a different form of dispute settlement than those listed in the Convention, the form chosen will prevail over that set out in the Convention. From the reading and analysis of UNCLOS it is possible to see that it has several mechanisms for conflict resolution. However, despite the model adopted is not the ideal for some, still it is better than the absence of specific legislation on the Law of the sea, since the objective set out in Part XV – peaceful settlement of disputes, has been achieved. Thus, the dispute settlement system provided for in Part XV of the Convention can be described as follows: a) the parties can settle their issues peacefully; b) if they wish, the parties can request the intervention of a third party to settle the conflict, through conciliation; c) the parties can still choose which mechanism they will use, excluding conciliation, when it is not effective; d) if the parties are unable to choose the dispute settlement mechanism that suits them best, an arbitral tribunal will be created, and the decision issued by that tribunal is binding; e) the ITLOS, when chosen by the parties, will also produce a binding decision.

It is noteworthy also that the Montego Bay Convention presents solutions of disputes to questions related to the marine environment. In the words of Zanella (2015):

> First, notwithstanding the general obligation of peaceful settlement of disputes and compulsory application of section 2, especially the Arbitral Tribunal, to UNCLOS members, third section brings, as seen, important limitations. Art. 297, item 1, establishes that, as a general rule, section 2 does not apply in cases where the facts occurred in an area under state jurisdiction. However, for environmental issues, subparagraph c) excludes this provision by highlighting that section 2 applies: "when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to

[1] In 1967, at the UN General Assembly, the then Ambassador of Malta, Arvid Pardo, alerted the International Society about the need to regulate the exploitation of mineral wealth existing in the seabed, to prevent it from being restricted to the great powers, with enough technology to exploit them. From then on, international discussions began, which later gave rise to the United Nations Convention on the Law of the Sea (UNCLOS). Arvid Pardo's speech was a milestone for the development of the Law of the Sea, as note Albuquerque and Nascimento (2002, p. 130 - 131): "In recommending a prompt international action that would prevent such danger from coming true, this diplomat defended the thesis that the riches of the international seabed constituted a 'common heritage of humanity' and should be treated as such. The exploitation of this common heritage should be done for the benefit of all States and, especially, of developing countries" (ALBUQUERQUE; NASCIMENTO, 2002, p. 130-131).

> the coastal State and which have been established by this Convention or through a competent international organization… (ZANELLA, 2015, p. 43, emphasis added).

Thus, from the reading of art. 297 of the Convention, it is possible to state that the application of section no. 2 is subject to the existence of a specific environmental standard for the protection and preservation of the environment; this standard must be applicable to the States in the specific case and, in addition, the environmental standard must have been established by the Montego Bay Convention, or by an international organization or, even by a diplomatic conference, as long as in accordance with the Convention. However, it should be noted that art. 297 can only be applied when environmental issues occur in spaces that were under national jurisdiction, excluding, therefore, the High Seas[2] and the Area[3].

It should also be considered that the Convention provides for the possibility of adopting proper procedures with regard to the protection of the marine environment. This is what can be inferred from reading art. 287, paragraph 1, subparagraph "c" of the Convention. According to this legal text, for the issues dealt with in Annex VIII to the Convention, namely: fisheries, protection and preservation of the marine environment, marine scientific research, or navigation, including pollution from vessels and by dumping, a special arbitral tribunal should be created. It reads:

> ANNEX VIII
> SPECIAL ARBITRATION
> ARTICLE 1
> Article 1
> Institution of proceedings
> Subject to Part XV, any party to a dispute concerning the interpretation or application of the articles of this Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, or (4) navigation, including pollution from vessels and by dumping, **may submit the dispute to the special arbitral procedure** provided for in this Annex by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based (BRASIL, 1990, emphasis added).

Although the aforementioned article deals with a special arbitration, the procedure to be adopted in this tribunal is the same as that adopted by the arbitral tribunal referred to in Annex VII of the Convention. However, the creation of a special court is not binding. In the words of Zanella (2015):

> Then, we have that contrary to "normal" arbitration, the creation of a special tribunal is not binding. That is, if the parties do not reach a consensus to institute it, special arbitration cannot be used in the case that arises. As already seen, only arbitration can be constituted in a binding manner, and even for cases of protection of the marine environment or pollution by ships, there is no provision for the creation of a special tribunal in an imposing way, the will of the States prevails (ZANELLA, 2015, p. 46).

The matter to be settled by the special arbitral tribunal will be resolved by specialized arbitrators. Thus, opinions and decisions will be of a technical nature, since there is a list containing the experts who can act in each case, and these experts have specific technical knowledge. In this sense, the words of Nordquist (1989) are:

> *Annex VIII reflects two concerns. On the hand it recognizes the importance of scientific and technical considerations in the settlement of certain disputes. On the other hand, and of no less importance, it recognizes that the establishment of facts can serve as the basis for the settlement of a dispute* (NORDQUIST, 1989, p. 441).

The competence to draw up the list of experts depends on the demand to be settled, but the Convention, in its art. 2, paragraph 2, of Annex VIII presents the United Nations organisms responsible for the development and maintenance of each list of experts, namely:

> Art. 2 of UNCLOS Annex VIII . […] 2. The lists of experts shall be drawn up and maintained, in the field of fisheries by the Food and Agriculture Organization of the United Nations, in the field of protection and preservation of the marine environment by the United Nations Environment Programme, in the field of marine scientific research by the Intergovernmental Oceanographic Commission, in the field of navigation, including pollution from vessels and by dumping, by the International Maritime Organization, or in each case by the appropriate subsidiary body concerned to which such organization, programme or commission has delegated this function. (BRASIL, 1990).

The special arbitral tribunal has yet another specificity, provided for in art. 5 of Annex VIII of the Convention, that is, fact finding. It reads:

> Art. 5 of UNCLOS Annex VIII.
> Fact finding
> 1. The parties to a dispute concerning the interpretation or application of the provisions of this Convention relating to (l) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, or (4) navigation, including pollution from vessels and by dumping, may at any time agree to request a special arbitral tribunal constituted in accordance with article 3 of this Annex to carry out an inquiry and establish the facts giving rise to the dispute.
> […]
> 3. If all the parties to the dispute so request, the special arbitral tribunal may formulate recommendations which, without having the force of a decision, shall only constitute the basis for a review by the parties of the questions giving rise to the dispute. […] (BRASIL, 1990, emphasis added).

Thus, when the parties have doubts as to the interpretation or application of the provisions of the Convention, they may, by mutual agreement, request the special arbitral tribunal to conduct an investigation to determine the facts that raised the doubt. The opinion issued by the court, based on the investigation carried out, does not have a binding character, since, as the legal text itself clarifies, it has no force of a decision and should only be used by the parties as a source of consultation on controversial issues. The dispute settlement systems provided for in the Montego Bay Convention are those described in this section. Although the ITLOS also composes the framework of disputes under the Convention system, it will be discussed in the following sections of this article.

The procedure for protecting the marine environment in the international tribunal for the law of the sea: The ITLOS, established by the Montego Bay Convention, based in Hamburg, Germany, was installed on October 18, 1996, in order to judge questions regarding the application and interpretation of the Law of the sea that are brought to its attention by member States of the Convention. It should be noted that despite having headquarters in Hamburg, the ITLOS can meet and exercise its functions in any other place, when it deems it desirable, in the exact terms of Annex VI, art. 1, paragraph 3, of the Convention.

The ITLOS composition is provided in Annex VI, articles 2-6 of the Convention and, according to Menezes (2015), can be summarized as follows:

[2] From reading art. 86 of the Convention, the High Seas comprise "all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State" […] (BRASIL, 1990).

[3] Art. 1 of the United Nations Convention on the Law of the Sea.
[…] 1) "Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction; (BRAZIL, 1990)

> The Tribunal consists of a body of 21 independent members, nominated according to equitable geographical distribution criteria, and no two members of the Tribunal may be nationals of the same State, elected by the member States of the Convention for the renewable term of nine years. Candidates must be persons with the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea. The organization's management composition is structured by a President, a Vice-President, a Registrar, the Secretary-General and by the trial chambers, formed by eleven members (MENEZES, 2015, p. 205).

The ITLOS has the competence to judge issues related to the interpretation or application of the Montego Bay Convention, as well as any other case submitted to it, provided that the parties accept the jurisdiction of the Tribunal. In the event of a conflict of competence, it is up to ITLOS to judge the matter, as provided in art. 288, paragraph 4, of the Convention, *in verbis*: " […] 4. In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal" (BRASIL, 1990).

The ITLOS has a contentious and advisory role. In the case of contentious activities, its decision is sovereign and shall be complied with by all the parties involved in the dispute. That is, the decision issued by ITLOS has inter-party effects. In case of disagreement with the decision handed down, it is up to ITLOS to analyze it:

> Art. 33 of Annex VI UNCLOS. Finality and binding force of decisions
> 1. The decision of the Tribunal is final and shall be complied with by all the parties to the dispute.
> 2. The decision shall have no binding force except between the parties in respect of that particular dispute.
> 3. In the event of dispute as to the meaning or scope of the decision, the Tribunal shall construe it upon the request of any party. (BRASIL, 1990).

With regard to advisory activity, it is up to the ITLOS to issue an opinion on international agreements under the Montego Bay Convention. Access to the ITLOS can be done by the Member States, as well as by different entities. These entities are those listed in art. 305 of the Convention, and this list should include international organizations. The States that are not part of the Convention can also resort to ITLOS provided there is agreement in this regard. According to Zanella (2017), "and secondly, non-party states can also have access, provided that an agreement exists, expressly accepted by all parties, assigning competence to the Tribunal" (ZANELLA, 2017, p. 605). The ITLOS can also be accessed by the Authority[4], Enterprise[5], state-owned companies, individuals or legal entities in cases related to the Area and competence of the Seabed Disputes Chamber (SDC). As already stated, the ITLOS does not, as a rule, have mandatory competence. This means that the questions will only be brought to it in case of express agreement between the parties on the dispute being resolved before the ITLOS, and, in this case, the decision is binding and mandatory between the parties. However, the Convention establishes three cases in which the jurisdiction of the ITLOS is mandatory: a) use of the seabed beyond the national jurisdiction, the Area; b) release of vessels and crew; c) provisional measures[6]. The decisions handed down by the ITLOS must be justified and guided by the Montego Bay Convention, as determined by art. 23 of the ITLOS Statute and art. 293 of the Convention. It reads:

> Art. 23 of Annex VI of UNCLOS.
> Applicable law
> The Tribunal shall decide all disputes and applications in accordance with article 293. (BRASIL, 1990).

> Art. 293 of UNCLOS.
> Applicable law
> 1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.
> 2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case *ex aequo et bono*, if the parties so agree. (BRASIL, 1990) .

The above-mentioned provisions establish the superior character of the Convention, since it should be applied as a priority to the detriment of other international standards. International standards should only be applied in the absence of a specific standard in the Convention. It should also be noted that art. 22 of the Statute of the Tribunal provides for the possibility of applying the jurisdiction of the ITLOS in cases of disputes arising from other agreements. This means that, if the signatory parties to another existing treaty agree, they can establish the ITLOS as competent to adjudicate disputes regarding the interpretation or application of that treaty, as long as the issue concerns the law of the sea.

> Article 22 of Annex VI to UNCLOS. Reference of disputes subject to other agreements If all the parties to a treaty or convention already in force and concerning the subject-matter covered by this Convention so agree, any disputes concerning the interpretation or application of such treaty or convention may, in accordance with such agreement, be submitted to the Tribunal. (BRASIL, 1990).

Art. 293 of the Convention further establishes that a dispute may be decided by *ex aequo et bono*, if the parties so agree. In this case, it will be up to the judge to decide on an equitable and valid basis. In the words of Zanella (2017), "it can be used when both parties choose to give judges the power to decide the conflict based on their fairest understanding" (ZANELLA, 2017, p. 607).

Still on the trial by *ex aequo et bono*, Fiorati thus writes (1997):

> As international courts decide using customary or conventional international standards as a paradigm, which are extremely generic, given that they represent a generic and specific agreement between States on the jurisdictionalization of international relations, which, by their very nature, are broad and encompass diverse interests, it has always been the practice of these courts to adopt equity in their judgments. In Law of the Sea, equity maintains its function of allowing the Tribunal to resolve conflicts when conventional or customary standards are neglectful, unfair or flawed (FIORATI, 1997, p. 152).

Within the scope of ITLOS, the process follows the common rite of international jurisdiction, comprising a written and an oral part. Once these parts are closed, there is the trial of the dispute. The ITLOS procedure is regulated by the Statute of the Tribunal (Annex VI to the Convention), as well as in the Rules of the Tribunal. In the words of Menezes (2015), the process initiated at ITLOS is as follows:

> Disputes before the Tribunal are instituted by written petition or by notification of a special agreement, and the procedure to be followed is defined in accordance with the Statute of the Tribunal. Applications are submitted to the Registrar that notifies the member State concerned and all other States; after the dispute, a sentence based on factual and legal reasons is issued (MENEZES, 2015, p. 205).

[4]Art. 1 of the United Nations Convention on the Law of the Sea. […] 2) – Authority means the International Seabed Authority (BRAZIL, 1990)

[5]Art. 170 of the United Nations Convention on the Law of the Sea. 1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2(a), as well as the transporting, processing and marketing of minerals recovered from the Area. […] (BRAZIL, 1990).

[6]Art. 290 of the United Nations Convention on the Law of the Sea. 1. If a dispute has been duly submitted to a court or tribunal which considers that prima facie it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures 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. […] (BRASIL, 1990).

Still on the proceedings of the suit in the ITLOS, the sayings of Weigert and Badaro (2012) are transcribed:

> According to Article 27 of the Statute of the Tribunal, the conduct of the case is defined by the Tribunal itself, which establishes prescription and peremption periods. The decisions taken by it must be made by a majority of the members of the Tribunal who are present, as stated in Article 29, and, in the event of an equality of votes, the President or the member of the Tribunal who acts in his place shall have a casting vote (WEIGERT; BADARÓ, 2012, p. 47).

As for the trial of issues related to the Law of the Sea by the ITLOS, one must be aware that it competes with the arbitral tribunals, as well as the ICJ. In addition, countries prefer to resolve their international disputes through diplomatic and political means, and this, combined with competition with other forms of dispute settlement, end up undermining the Tribunal's actions. From what has been shown, the Montego Bay Convention broke new ground by creating a special tribunal to deal with matters related to the law of the sea. However, despite the low demand brought to the ITLOS, the effectiveness of its judgments and its importance for protecting the marine environment will be demonstrated in the next section.

The (IN) effectiveness of the procedure for marine environment protection at the international tribunal for the law of the sea: The existence of international regulations governing the law of the sea and the establishment of dispute settlement bodies, especially the ITLOS, are obviously a major breakthrough and an undeniable achievement of mankind to promote the responsible use of ocean resources and ensure the protection of the marine ecosystem. However, if this entire protective system does not really obtain positive results, that is, if it is not effective, efforts to protect the marine environment will be of no use and it will remain at risk of suffering irreparable damage. The main question, therefore, is to define the effectiveness of the system[7], specifically with regard to the performance of the ITLOS, the main jurisdictional body of the United Nations for protection of the marine environment. However, in order to achieve this effectiveness, cooperation between all actors in international society, be it national states, international organizations, even transnational companies and individuals in general, must be guaranteed, extending normative protection in the international order and in various internal orders, based on constitutional provisions. Thus, Souza (2015) notes:

> It can be said that international legal cooperation basically refers to the set of national and international rules that regulate mechanisms of procedural and decision-making procedures that aim to enforce the law in different States, having States, individuals, entities, companies, International Organizations and International Courts as subjects of cooperation. Once the very States commit themselves in their Constitutions to respect International Law and to cooperate with the other States, the importance of these cooperative rules for the international community is perceived, in view of the cross-border and universal challenges that permeate the International Law in contemporary times (SOUZA, 2015, p. 312).

International cooperation is essential to codify the standards of the Law of the sea in the national and international levels, but it is even more important for imparting the necessary effectiveness to court decisions so that such standards do not remain on the paper, but are reflected in actual results. It should be noted that the decisions of international courts constitute sentences and, as such, they are born imbued with the authority of *res judicata* and, in Brant's words (2002):

> […] the original source of respect for the normative content of the international sentence lies in the jurisdictional condition of the body that pronounced it and in the fact that it represents the will of the international community to preserve legal stability and social peace as vital interests (BRANT, 2002, p. 9).

The very survival of public international law depends on the degree of effectiveness of its standards and, consequently, on the judicial decisions that confirm this effectiveness in specific cases. Menezes (2015) states that:

> In International Law, in the discussion of International Tribunals, effectiveness involves the concrete implementation of normative precepts from the sources of International Law. Specifically, with regard to the International Tribunals, their existence and functioning within the principles and values concern their creation and, therefore, their performance before international society and the success of their judgments from the jurisdictional exercise; also, the fulfillment, by the parties, of the judged precepts, determining or recognizing the attribution of a right. In certain circumstances, the discussion on effectiveness within international tribunals has taken place as a working principle, not only to indicate that they have competence and capacity, but also to ensure the effective exercise of their respective functions, which are conferred by treaties that gave them jurisdiction (MENEZES, 2015, p. 207).

International court sentences are not subordinate to the sovereignty of a given State. They differ from state sentences, as they are issued by agencies endowed with supranationality[8], legitimized by the free and sovereign accession of States to their jurisdictional competence. Each State that becomes a member of an international tribunal undertakes to respect its jurisdiction and abide by its decisions, and cannot even establish reservations regarding the provisions of its constitutive treaties. The general and unreserved acceptance of international jurisdiction equates international court sentences with domestic court decisions, as unlike foreign judgments, international court decisions do not need to be ratified, becoming fully enforceable jurisdictional titles within the territories of the member States, subordinating them to the authority of international *res judicata*. In this sense, the Constitution of the Republic of 1988 (CR/1988) provides in paragraph 4 of its art. 5 that Brazil submits to the decisions of international tribunals of which the country is a party: "Art. 5 of CR/1988. […] Paragraph 4: Brazil accepts the jurisdiction of an International Criminal Court to whose creation it has expressed its adhesion." (BRASIL, 1988). Although the aforementioned constitutional provision referred to the International Criminal Court, the interpretation to be applied is extended to all international courts of which the Federative Republic of Brazil is a party, be they regional or global, since the commitment assumed is with international society itself, aimed at enforcing public international law in its entirety,

[7] For a deeper understanding of the political dimension of sustainability as a way of ensuring fundamental intergenerational rights, especially the reasonable duration of the procedure, see: GOMES; FERREIRA, 2017, p. 102-103 and 106-108.

[8] The idea of supranationality is enshrined in the scope of so-called Community law, or as it is referred to today, European Union law. Professor Medeiros stated that there was a difference between the ordinary international jurisdiction, made by international courts and the community jurisdiction, in charge of the community courts, the latter being the only ones endowed with supranationality, since their sentences would already be incorporated into the orders internal to the member states of the European Community, whose sovereignty had been shared by the community agreement and, therefore, automatically subordinated to the authority of the Court of Justice of the European Union, former Court of Justice of the European Communities (MEDEIROS, 1997).
However, although Public International Law does not, as a rule, make state sovereignty more flexible, recognition of jurisdiction and subordination to international jurisdiction also occurs by virtue of treaties and each member state of an international court lends these courts authority to judge them and automatic recognition of their decisions, being empowered with material *res judicata*, with immediate feasibility and *erga omnes* effects. That is why we can credit the international sentences and the Courts that issued them with supranational status, which, however, does not extend to other International Organizations.

promoting international cooperation in all matters of common interest to humanity.

The Law of the sea is one of those common interests of humanity, since all countries, even those that have no coastline, are equally dependent on marine resources and the sea as a space for navigation and communication between peoples. The whole evolution of humanity and the process of globalization, in all its phases, are a consequence of the conquest of the seas, since the beginning of human history. The regulation of the common use of marine navigation and exploitation of ocean resources is one of the pillars of public International Law, and respect for its rules and the jurisdiction of the ITLOS is a condition *sine qua non* to preserve these resources for future generations. The Montego Bay Convention, already in its preamble, recorded the reasons why it became imperative for humanity to establish an international regime for the seas and the establishment of a specific legal order for protection of the oceans and regulation of their use for all purposes[9]. The Montego Bay Convention stipulates, in its Annex VI, the Statute of the ITLOS[10]. The Statute establishes, in its art. 33, the definitive condition of ITLOS decisions, with the immediate subordination of all parties involved in the dispute, providing for the mandatory sentence, its scope and interpretation (BRASIL, 1990).

As Menezes notes (2015):

> […] the sentence of an international tribunal or court is covered by legal obligation, constituting a particular rule of the international legal order, which makes those who were considered legally submissive to the application obliged to comply fully with the sentence. If they do not do so, they will be in the field of illegality under International Law, even if in certain circumstances the existence of normative sanction as an instrument of law is limited.185, 186 In turn, the growing jurisprudence, which keeps informing new doctrinal positions and jurisprudence and consolidating the old ones, permeates international society, increasingly consolidating International Law in an arguably effective and concrete way. It is specifically here that the debate on the jurisprudential orientation of the International Tribunal for the Law of the Sea is relevant, in that it is responsible for the conceptual consolidation of the Jamaica Convention (MENEZES, 2015, p. 208).

As for the decisions handed down by the ITLOS, these have the power to increasingly preserve the marine ecosystem, taking into account the maxim *in dubio pro natura*. In this sense, it is notorious within the scope of the ITLOS the application of the precautionary principle in order to avoid any damage to the marine environment. For Zanella and Cabral (2017), this principle has an important application in the case of the Law of the sea. It reads:

> *Nevertheless, it is acknowledged that the precautionary approach still needs to be better regulated and developed. The precautionary approach is not accepted as an indisputable principle in international environmental law. However, for legal protection of the seas, the principle has been increasingly applied, particularly by the ITLOS* (ZANELLA; CABRAL, 2017, p. 252).

Thus, the guarantee of the effectiveness of the international law of the sea lies in the compliance and respect for its standards, but above all in the authority of the decisions of the ITLOS, whose authority is immediate and direct for parties of disputes submitted to it, with its compliance also mandatory to all countries parties to the Montego Bay Convention, as part of the commitment of national States with public international law and in the interests of humanity today and for future generations[11].

CONCLUSION

Since ancient times, peoples have used the oceans, mainly as a form of economic expansion. Because of technological advances, as well as to the potential exploitation of oceanic natural resources by countries possessing the technological resources, international society has become concerned with establishing rules for the use and/or exploitation of the sea. Thus, the UN convened its Member States to discuss an international document that would be able to establish rules for the use and/or exploitation of the sea. So, in 1958 was held the first International Conference on the Law of the Sea, and in it were developed important international documents that provided for the protection of the sea. The second International Conference on the Law of the Sea was held in 1960, but it did not result in any international document. The third UN Conference on the Law of the Sea began in 1973 in New York city, US, and lasted for nine (9) years until, in 1982, in the city of Montego Bay, Jamaica, the current UNCLOS text was approved. However, for this document to come into force, it had to be ratified by at least 60 countries, something that happened only on 16 November 1994. Once in force, the Montego Bay Convention established several dispute settlement mechanisms, the biggest innovation of which was the creation of the ITLOS. The dispute settlement mechanisms are provided for in Part XV of the Convention, and the Member States of that Convention are free to choose the one that suits them best. For clarification purposes,

[9] Montego Bay Convention (preamble):
The States Parties to this Convention,
Prompted by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world,
Noting that developments since the United Nations Conferences on the Law of the Sea held at Geneva in 1958 and 1960 have accentuated the need for a new and generally acceptable Convention on the law of the sea,
Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole,
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,
Bearing in mind that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked,
Desiring by this Convention to develop the principles embodied in resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared inter alia that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States,
Believing that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter,
Affirming that matters not regulated by this Convention continue to be governed by the rules and principles of general international law, (BRASIL, 1990, emphasis added).

[10] Annex VI to the United Nations Convention on the Law of the Sea.
Statute of the International Tribunal for the Law of the Sea:
ARTICLE 1
General Provisions:
1. The International Tribunal for the Law of the Sea is constituted and shall function in accordance with the provisions of this Convention and this Statute.
2. The seat of the Tribunal shall be in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany.
3. The Tribunal may sit and exercise its functions elsewhere whenever it considers this desirable.
4. A reference of a dispute to the Tribunal shall be governed by the provisions of Parts XI and XV.

[11] For further details on the relationship between public policies and the objectives of sustainable development, in their multiple dimensions, see: GOMES; FERREIRA, 2018, p. 155-178.

the mechanisms provided in the Convention are: a) Conciliation; b) ITLOS; c) ICJ; d) arbitral tribunal constituted pursuant to Annex VII; e) special arbitral tribunal constituted pursuant to Annex VIII. With regard to the protection of the marine environment, the Montego Bay Convention, in its art. 297, section 2, establishes a distinctive procedure for their protection. Within the scope of the ITLOS, it should be clarified that its use is the exception, since States must always seek peaceful solutions to resolve their conflicts. The ITLOS has a contentious and advisory role, and its decisions are final and binding. It is worth noting that the Member States, international organizations and other entities mentioned in art. 305 of the Convention can legitimately trigger the ITLOS, as well as States that are not parties to the Convention. In the latter case, to be subject to the jurisdiction of the ITLOS, States must expressly manifest themselves. Although the jurisdiction of the ITLOS is the exception, the Convention establishes cases where the jurisdiction of the ITLOS is mandatory. They are: a) use of the seabed beyond international protection, the Area; b) release of vessels and crew; and, c) provisional measures.

The decisions handed down by the ITLOS must be justified and duly guided by the Convention and, in the event of other international standards liable to resolve the dispute, their text will be applied as a matter of priority. These international standards will only prevail over the Convention when it does not comment on the subject matter of the dispute. The ITLOS can also act in the solution of disputes coming from other international agreements, as long as they provide for the Law of the Sea and the parties establish the jurisdiction of the ITLOS. ITLOS judges, when deciding on any matter that is within the jurisdiction of the Tribunal, may do so by *ex aequo et bono,* if the parties so agree. Thus, the judges will decide according to their conviction about what is fairer. International cooperation guarantees the effectiveness of the decisions issued by International Tribunals. Furthermore, these decisions, being sentences, are considered to have the authority of the material *res judicata*. It is also important to note that the sentences of international tribunals are issued by supranational bodies, which are legitimized by the free and sovereign accession of States to their jurisdiction. Thus, once under the jurisdiction of an international tribunal, the State must respect the jurisdiction of that tribunal and abide by its decisions. In addition, the sentences issued by international tribunals do not need to be ratified, that is, as soon as they are issued, they constitute executive titles and, in this condition, they are perfectly enforceable within the territories of the Member States, subject to the authority of international *res judicata*. Thus, the presidential veto to art. 515, item X, of the 2015 Code of Civil Procedure, was a real backlash in terms of judicial executive titles, before the treaty once received by Brazil. The sea is in the common interest of humanity. Even those countries that have no coastline are dependent on marine resources and spaces for navigation and communication between peoples. The Montego Bay Convention brings, specifically in Annex VI, the ITLOS Statute. Article 33 of this Statute establishes the final condition of ITLOS decisions, as well as the immediate subordination of the parties involved in the litigation, providing for the mandatory nature of the sentence, its scope and interpretation. From all that has been said elsewhere, the effectiveness of the ITLOS in protecting the seabed is clear, mainly due to the authority and finality of its decisions, as well as the immediate and direct effectiveness with respect to the parties involved in the conflict. It should also be clear that decisions handed down by the ITLOS oblige both the parties to the dispute and the other signatory States of the Convention, in strict compliance with the intergenerational principle.

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