

The Law of the Sea Disputes To be Heard in Singapore

- Harsh Mahaseth

The International Tribunal of the Law of the Sea (ITLOS) is headquartered in Hamburg, Germany, just like several other headquarters of international organizations being in the western regions of America and Europe. The location of the headquarters, along with other factors like the influence of ideas by western nations, undoubtedly instilled a lot of participation from these regions. However, the Asian regions were often neglected to receive any recognition from the international organizations. The Western-centric notion of sovereignty and colonial discourse provides a coherent explanation of why international law reflects [global inequalities](#) over half a century after decolonization. Consequently, the extent of faith and reliability over these bodies, by them, was also minimum.

Consultations concerning Singapore as a seat for the Tribunal began in 2007. This led to a Joint Declaration being [signed](#) between the Ministry of Law and President of the Tribunal. Negotiations on the terms of the Model Agreement, as per Article 7 of the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, concluded in October 2019.

Under Article 1, Para 3 of the Statute of the ITLOS, “*The Tribunal may sit and exercise its functions elsewhere whenever it considers this desirable.*” In furtherance of the said article, the Joint Declaration in 2015 was signed. Therefore, in 2015, Singapore did not become a legal adjudicator for the settlement of law of the sea disputes. Rather, it was simply allowed to conduct ITLOS proceedings in Singapore. A [similar agreement](#) for the provision of facilities for arbitral disputes administered by the Permanent Court of Arbitration (PCA) was concluded between Singapore and the PCA in 2007.

On June 11 2020, during a virtual ceremony, a step was taken forward. ITLOS and Singapore signed a model agreement to enable the Tribunal to sit in Singapore. It meant that countries engaged in disputes over any dispute related to International Law of the Sea matters may now [bring those disputes](#) to ITLOS but have them seated in Singapore.

THE POSSIBLE CONSEQUENCES

Recognition to the Asian States

Undoubtedly, the recognition of Asian states in international adjudicatory bodies has been low, with western influence playing a major factor. Only 8% of Asian states have accepted compulsory jurisdiction of the International Court of Justice (ICJ), and they have [similar](#) rates of accepting other international institutions and conventions, including the International Criminal Court (ICC) and the World Trade Organization (WTO), in terms of the number of participants. As of now, [only a few Asian countries](#) have brought disputes before ITLOS, namely Bangladesh, India, Japan, Malaysia, Myanmar and Singapore: a total of six Asian countries out of more than 40. Nevertheless, some [gradual change](#) has been observed as there has been an [increase in Asian participation](#) at the ITLOS as well as ICJ. The Asian nations are slowly changing their attitude towards accepting third party adjudication for the settlement of disputes, thus contributing more actively to the development of international law.

The ITLOS has 21 Judges who are elected by the parties to UNCLOS from among persons enjoying the highest reputation for fairness and integrity and having a recognized expertise in the law of the sea, and no two members of the Tribunal may be nationals of the same State. In 2009, as many as [five judges](#) represented the Asian nation. Such a representation allows non-biased decisions towards the Asian states and dilutes the influence of Western nations to a great extent. This also ensures that a change has been observed in recent years, in favour of the Asian nations. Article 3 of the ITLOS Statute ensures that the geographical representation of States is maintained within the Tribunal which has also been complied with, in its true essence.

These changes point out how the Asian States have been placing certain reliance on international bodies. The agreement works as a great incentive in continuation of these changes. The present agreement between ITLOS and Singapore definitely makes accessibility to ITLOS easier. This was [important](#), particularly as the East and South China Seas are home to a number of escalating territorial disputes between China and its neighbours, including Japan, Vietnam, and the Philippines. Another factor which shall increase accessibility is the reduction in costs of travel, which hampered the process since both the client and the counsel's charge added up to influence the decision in a significant way.

Singapore as a [possible venue](#) for the settlement of law of the sea disputes could also help to reduce the impression of Asian States that the settlement of public international law disputes is predominantly eurocentric and this may persuade more Asian States to resolve their law of the sea disputes via international dispute settlement, and with Singapore as a venue.

Development of an adjudicatory mechanism in the Asian region

The Asia-Pacific region covers vast maritime areas and therefore, it was necessary to introduce a mechanism to instil the faith of the Asian community in the adjudicatory mechanism developed internationally, under the aegis of the Western nations. Although most international disputes are resolved through political means, particularly bilateral negotiation and consultation, international adjudication and arbitration are indispensable as an [important component](#) of dispute settlement. The legal adjudication at Singapore could develop a growing stimulus to get disputes between nations adjudicated. Negotiations could still be helpful; however, the availability of other mechanisms in the region in easy access will leave no room for compromise. Establishing expertise in international conciliation could also [contribute to the future growth](#) of law of the sea disputes in Singapore.

It is often said that, in Asian cultures, an adversarial third-party dispute settlement procedure, such as a trial, is [preferred to be avoided](#). With the Seatseat in Singapore along with mediation and arbitration centres in Singapore, the choice of both, third party settlement and means of mediation and other related measures shall be available to the people.

Singapore, as THE Venue

The Joint Declaration is very promising. It can act as an [important catalyst for the growth](#) and also expand the possibility of Singapore being the venue for a range of other matters that are either unique to ITLOS, or in conjunction with the PCA Host Country Agreement. Singapore is [increasingly](#) becoming a venue for investor-state claims and the Singapore International Arbitration Centre continues to see an increase in the number of cases each year. Singapore has developed effective mechanisms to hear matters in reference to the PCA, ICSID as well as ITLOS. It has covered arbitration, mediation and other third party mechanisms to deliberate on the behaviour of a State. Issues involving complex rules incorporating all these mechanisms can be conveniently dealt with in Singapore. One can say Singapore has become a hub for

adjudication. With such easy availability to adjudication, all Asian States are to be benefited, undeniably.

CONCLUSION

Singapore is the [first country to have a model agreement](#) for proceedings before the Tribunal or a Chamber of the Tribunal to take place outside of the Tribunal's headquarters. Singapore has established its name in international politics with the present move. The costs of adjudication may fall, and the Asian States will finally achieve the recognition they need. A culture of adjudication may develop, which will impact several states and bodies. Faster disposal of cases will ultimately benefit all. President Paik also [stated](#) that

“The proactive stance on the part of the Tribunal to enter into such agreements is a testament to its capacity and willingness to swiftly adapt to ever-changing times whilst offering a flexible mechanism for the settlement of law of the sea disputes....The current COVID-19 pandemic causes the Tribunal to be innovative and explore methods utilizing modern technology that would enable it to operate effectively despite wide-ranging restrictive measures taken around the world.”

This is a remarkable achievement for all Asian States, and one may celebrate it now or when it approaches the Seatseat for adjudication.

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