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Abstract

Under the United Nations Convention on the Law of the Sea (UNCLOS), which is the so-called Constitution for the Sea, three bodies were newly established to implement it: the Commission on the Limits of the Continental Shelf (CLCS), the International Seabed Authority (ISA), and the International Tribunal for the Law of the Sea (ITLOS). CLCS is in charge of making recommendations from submissions by the coastal states concerning the outer limits of the continental shelf beyond 200 nautical miles from baselines. The ISA works as the administering body to implement the idea of the Common Heritage of Mankind (CHM) that is enshrined in Chapter XI of UNCLOS. ITLOS’s judgments and decisions have significantly contributed to the law of the sea jurisprudence. This paper first briefly examines institutional aspects of these bodies, then addresses their functions and roles in implementing UNCLOS. Next, it discusses some other bodies and mechanisms under UNCLOS that play practical and significant roles in implementing the provisions and rules of UNCLOS. These mechanisms are of great importance for ensuring the consistent and harmonized implementation of UNCLOS at the domestic, regional, and global levels. This aspect is considered within the context of looking at the institutional functions of these mechanisms under UNCLOS and the law of the sea.

I. Introduction

The main purpose of this article is to introduce a general overview of implementation mechanisms under the United Nations Convention on the Law of the Sea (UNCLOS) by discussing the significance of the bodies
which were newly established by UNCLOS and their roles in implementing UNCLOS².

These bodies are the Commission on the Limits of the Continental Shelf (CLCS), the International Seabed Authority (ISA), and the International Tribunal for the Law of the Sea (ITLOS). In addition to these major bodies, we should remember other, related institutions that are also significant, such as the Division for Ocean Affairs and the Law of the Sea (DOALOS), which, in implementing UNCLOS, also serves as the Secretariat of the CLCS.

To finish, a brief explanation will be made regarding some practical aspects of these UNCLOS institutions.

II. Three Major Bodies under UNCLOS

1. CLCS³

Let me first explain the main functions of the three major bodies mentioned earlier. Article 76, paragraph 8⁴ and Annex II⁵ of UNCLOS are the foundation of the CLCS. The CLCS has two principal functions: first, after considering the data and other materials submitted by coastal states, it makes recommendations to them concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles; second, it provides scientific and technical advice to those states preparing for the submission of the data mentioned above⁶.

It is noteworthy that UNCLOS seems to presuppose the possibility of, or even preference for, cooperation among the CLCS and other competent international organizations, such as the Intergovernmental Oceanographic Commission of UNESCO and the International Hydrographic Organization, so that the exchange of scientific and technical information may assist the CLCS in discharging its responsibilities⁷.

The limits of the continental shelf established by a coastal state on the basis of these recommendations ‘shall be final and binding’⁸. A coastal state that disagrees with the recommendations of the CLCS ‘shall, within a reasonable time, make a revised or new submission’ to the CLCS⁹.

The CLCS is composed of twenty-one experts in the fields of geology, geophysics, and hydrography¹⁰. They are elected with due regard to the need to ensure equitable geographical representation, but serve in their personal
capacities rather than as national or regional representatives\textsuperscript{11}. The CLCS acts through a sub-commission composed of seven members, and the recommendations made by the CLCS are based on those made by the sub-commission\textsuperscript{12}.

The following two points are here briefly made with regard to the major roles of the CLCS as an implementing body under UNCLOS.

First, the CLCS is authorized and competent to make recommendations on the submissions made by a state party concerning the extension of the continental shelf. The limits decided on via the recommendation of the CLCS are ‘final and binding,’\textsuperscript{13} although UNCLOS does not say that the recommendations are themselves final and binding.

The CLCS’s functions of considering the data and materials submitted to it and making recommendations will clarify issues arising related to the extent of the continental shelf in question. In other words, the recommendations rendered by the CLCS have considerable weight, in the sense that the institution is, in fact, the quasi-final authority on clarification of complicated and disputed situations of the continental shelf.

Second, the CLCS’s science-oriented, neutral, and non-political nature will enhance to a considerable degree the reliability and predictability of the CLCS as an organ of expertise. This nature will also greatly contribute to furthering the reliability and solidity of the maritime rules and orders under UNCLOS in the long run.

As in the case of the Japanese submission\textsuperscript{14}, the CLCS seems to have remained remote from the legal status of the Island of Okinotorishima\textsuperscript{15} by refraining from publicising its recommendation for the area around the Okinotorishima Island, in accordance with the principle that the CLCS has no competence to decide a legal matter, and, accordingly, that it will not be involved in territorial or boundary disputes between the states concerned\textsuperscript{16}.

2. ISA\textsuperscript{17}

The next major body is the ISA, which has its seat in Kingston, Jamaica. Its legal foundation can be seen in Part XI of UNCLOS, enacted in 1982, and it came into being in 1994 upon the entry into force of UNCLOS.

Its functions were fairly extensively modified by the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on

the Law of the Sea of 10 December 1982 (hereafter, the 1994 Agreement)\textsuperscript{18}. This was partially because UNCLOS needed to respond to the criticism of developed states concerning the provisions unfavourable to them, and partially because of changes in the world’s political and economic environment. In any event, these two instruments are to be interpreted and applied together ‘as a single instrument’\textsuperscript{19}.

The ISA exclusively organises and controls activities in the Area (by which is meant the sea-bed, ocean floor, and sub-soil beyond the limits of national jurisdiction), with a view to regulating the Area and its resources (such as poly-metallic nodules and poly-metallic sulphides)\textsuperscript{20}.

Since the Area and its resources are designated as belonging to the ‘common heritage of mankind’ (CHM) under UNCLOS\textsuperscript{21}, no state may claim or exercise sovereignty or sovereign rights over the CHM. The ISA, therefore, is to act on behalf of mankind as a whole\textsuperscript{22}. The ISA must provide for the equitable sharing of financial and other economic benefits derived from activities in the Area\textsuperscript{23}. Among others, the interests of developing states are to be taken into special consideration in these determinations\textsuperscript{24}.

There are three principal organs of the ISA: the Assembly, the Council, and the Secretariat\textsuperscript{25}. The 1994 Agreement, however, amended the original regime provided for in 1982 by UNCLOS, and the functions, management, membership, and decision-making of the ISA (including the Council and the Enterprise, among others) have been considerably modified.

Let us take a brief look at each of the ISA’s bodies.

The Assembly was supposed to be the supreme organ of the ISA\textsuperscript{26}, charged with setting ISA policies by considering and approving ISA rules, regulations, and procedures regarding activities in the Area\textsuperscript{27}. Though the rule of consensus is generally expected to apply, some of the provisions concerning the decision-making power of the ISA were changed in favour of developed states by the 1994 Agreement\textsuperscript{28}. The Secretariat of the ISA, which comprises a Secretary-General and staff\textsuperscript{29}, is now in charge of the functions of the Enterprise\textsuperscript{30}.

The Council, consisting of 36 members of the ISA, as the executive organ of the ISA, is in charge of setting specific policies, supervising and coordinating the implementation of the provisions of the deep seabed mining regime of UNCLOS\textsuperscript{31}. Through its decision-making process, the Council
receives assistance from two subsidiary organs (both of which are composed of 15 members with expertise with a term of 5 years): the Legal and Technical Commission and the Finance Committee.

Lastly, the Enterprise was established as the ISA organ charged with directly carrying out activities in the Area, and transporting, processing, and marketing minerals recovered from the Area.

The functions of the Enterprise, which were originally based on Article 170 and Annex IV of UNCLOS, have been also considerably limited by the 1994 Agreement. The Enterprise’s functions now will be confined mainly to monitoring and assessment.

At its inception, the ISA was one of the most controversial institutions established by UNCLOS. Through the modification made by the 1994 Agreement, however, the vast majority of the States Parties have vested the ISA with the task of guardian of the CHM, with administrative power over the worldwide deep seabed mining regime. The so-called parallel system of mining (conducted between the Enterprise and operators), which was rather notorious among developed states for its reservation of sections of the Area for both the Enterprise and developing states, was expected to be beneficial both to the developed states and to the developing states, and to be of merit to future generations.

This system, however, underwent significant modification by the 1994 Agreement in order to attract more private mining contractors and to reduce their burden to the Enterprise. Even though its practical role may be currently limited due to the unclear future of commercial prospects, the overall functions of the ISA will determine the future meaning of CHM.

Moreover, the ISA has been working on measures, including the Mining Code, which will be taken with special consideration of the environmental impact of deep seabed mining, comprised of the following three stages: prospecting, exploration, and exploitation. Countries already involved in the prospecting and exploration of resources in the Area include China, France, Germany, India, Japan, the Republic of Korea, the Russian Federation, and a consortium of Bulgaria, Cuba, the Czech Republic, Poland, the Russian Federation, and Slovakia.

ISA’s careful attention to balancing protection of the Area’s environment and enhancement of an economically plausible mining regime will also make a
considerable contribution to preserving marine biodiversity.

3. **ITLOS**

ITLOS, located in Hamburg, Germany, is a permanent judicial body established by UNCLOS and its Annex VI. It began functioning in 1996, and received its first case in 1997. To date, 19 cases have been submitted to it. Part XV of UNCLOS mandated the mechanism of the peaceful settlement of disputes concerning the interpretation and application of UNCLOS. Although the States Parties to a dispute are obliged to settle a dispute in accordance with the means provided in Article 33, paragraph 1, of the United Nations Charter, they may any time by consent choose another form of settlement.

In the absence of agreement on which method to choose, or in case of a failure to settle a dispute by the agreed method, the dispute must be submitted, by either state party’s request, to one of the following four institutions: the International Court of Justice (ICJ), ITLOS, arbitration under Annex VII, or special arbitration under Annex VIII of UNCLOS.

The States Parties to UNCLOS, however, may freely choose among these four methods. The mechanisms are titled under UNCLOS ‘Compulsory Procedures Entailing Binding Decisions’. If two states have already chosen the same procedure, they are to follow that mechanism. However, in the absence of agreement over the adjudication forum, States Parties to a dispute are obliged to select arbitration.

ITLOS basically has jurisdiction over disputes between states that have chosen it under Article 287. However, it has compulsory jurisdiction over all States Parties to UNCLOS in the following three areas: cases concerning requests for prompt release of vessels and crew(s); cases which are to be settled by arbitration and for which ITLOS is the forum to hear requests for provisional measures; and cases where the Seabed Disputes Chamber (SBDC, a separate and subsidiary body of ITLOS comprised of 11 judges) has exclusive and compulsory jurisdiction over disputes concerning activities in the Area.

ITLOS consists of 21 judges, elected by the parties to UNCLOS from those with the highest reputation for fairness and integrity and of recognised competence in the field of the law of the sea. They are elected, as the representatives of the principal legal systems of the world, on the basis of equitable geographical distribution.
ITLOS may also establish special chambers, composed of three or more judges, to deal with particular categories of disputes\(^\text{47}\). For example, ITLOS has already established chambers such as a Chamber for Fisheries Disputes, a Chamber for Marine Environment Disputes, a Summary Procedure Chamber, and a Chamber for Maritime Delimitation Disputes.

From what has been explained so far, the following summary can be made with respect to the roles of ITLOS.

First, it has brought about jurisprudence on the law of the sea by pronouncing law and settling disputes\(^\text{48}\). Its judicial function under UNCLOS is significant in the sense that the peaceful settlement mechanisms of the UN system have been functioning with considerable support from the States Parties to UNCLOS.

Second, ITLOS’s role also adds considerable meaning to the development of the law of the sea, among other things. It has dealt with various types of disputes regarding the law of the sea, such as demands for the prompt release of vessels and crews\(^\text{49}\), maritime delimitations, and fisheries disputes.

Moreover, the Seabed Dispute Chamber (SBDC)\(^\text{50}\) recently had the first occasion to exercise its power to issue an advisory opinion on the question of the responsibilities and obligations of states sponsoring persons and entities with respect to activities in the Area\(^\text{51}\), submitted by the Council of the ISA\(^\text{52}\). Under Article 191 of UNCLOS, the Assembly or the Council of the ISA may request the SBDC to give an advisory opinion on legal questions arising within the scope of their activities. Such opinions are given as a matter of urgency\(^\text{53}\).

Its unanimous opinion is a well-balanced interpretation and clarification of the provisions concerning the deep seabed mining regime under UNCLOS\(^\text{54}\). This occasion has also provided us with a good example of the relationship between the ISA and ITLOS, on one hand, and of effective use of the advisory jurisdiction of the SBDC of ITLOS, on the other.

Access to ITLOS is open to a wide variety of entities other than States Parties, such as the ISA, the Enterprise, and natural and juridical persons such as the European Community, whereas ‘[o]nly States may be parties in cases’ before the IC\(^\text{55}\). ITLOS’s advisory jurisdiction may, therefore, be more often utilised by the international community facing new challenges in maritime affairs.

Third, particular reference should be made to the cases dealt with by
ITLOS. It may be of interest to consider the *de facto* preliminary role of ITLOS in regard to its competence to indicate provisional measures where the merits of cases such as the *Southern Bluefin Tuna case*\(^{56}\) and the *MOX Plant case*\(^{57}\) (which was later withdrawn) were considered in arbitration. This may explain an aspect of the multifaceted nature of the peaceful settlement mechanism under UNCLOS.

These three roles for ITLOS create the potential for the organization to carry great weight in the administration of UNCLOS provisions. For example, 9 out of 19 cases on the docket of ITLOS are mainly concerned with the prompt release of the vessels and crews arrested\(^{58}\). In this sense, ITLOS may be useful and of some help for the applicants to meet their needs in terms of dispute settlement particularly in this field. However, it still remains to be seen how far utilised ITLOS will be in the future under the current circumstances where the accumulation of precedence in other various fields are also strongly expected.

### III. Other Institutional Mechanisms Related to the Implementation of UNCLOS

In addition to the bodies mentioned above, we must not overlook the other implementation mechanisms available under UNCLOS. It may be said that three different levels of implementation are presupposed in the Convention, and that each level has its particular bodies with specific roles and functions in implementing the Convention. These include the United Nations system and other international organizations at the global level, individual States Parties at the national level, and finally regional and sub-regional organizations at the regional level\(^{59}\).

The relations between these levels of implications are established as well. States Parties are expected to harmonize their national legislation and to ensure the consistent application of relevant rules and regulations under UNCLOS\(^{60}\).

Regional action, coordination, and cooperation in the maritime fields are necessary to implement UNCLOS and to ensure integrated management and sustainable development of the seas and maritime areas through regional organizations and cooperative institutions such as the EU, ASEAN, and the
Arctic Council.

Cooperation and coordination at the global level are also necessary to implement UNCLOS and to ensure consistent and integrated ocean management worldwide. Besides the UNCLOS bodies mentioned above, the UN family of institutions, including its principal organs and other related and competent bodies, along with other intergovernmental organizations and institutions of the related multilateral agreements can be also regarded as part of the implementation mechanisms available under UNCLOS.

Some examples can be given here\(^{\text{61}}\). The arrangements under UNCLOS for regional fisheries management organisations necessitate their cooperation with fishery arrangements under the Food and Agricultural Organization (FAO)\(^{\text{62}}\). Integrated marine environmental protection equally seeks collaboration between regional seas programmes introduced by the United Nations Environmental Programme (UNEP). Some of the provisions in UNCLOS imply the role of the International Maritime Organisation (IMO)\(^{\text{63}}\) to serve as ‘the competent international organization’ required under the provisions of UNCLOS for issues such as those related with territorial waters, straits, the right of archipelagic sea lanes passage\(^{\text{64}}\), and pollution from vessels.

Moreover, in order to effectively implement some provisions of UNCLOS relating to the protection of underwater cultural heritage\(^{\text{65}}\), one may assume that UNCLOS and its States Parties will expect the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and its agreements to play active roles\(^{\text{66}}\).

One may easily pick up some key roles played by the Secretary-General, meetings of States Parties to UNCLOS, and the UN General Assembly and its subsidiary bodies (such as the Ad Hoc Open-ended Informal Working Group to Study Issues Relating to the Conservation and Sustainable Use of Marine Biological Diversity beyond Areas of National Jurisdiction).

The UN General Assembly annually reviews and evaluates the implementation of UNCLOS and other relevant developments on the basis of an annual report made by the Secretary-General. The General Assembly has provided a forum to facilitate consultation and discussion on important topics concerning ocean matters.

Since 2000, the General Assembly has utilised an open-ended, informal, consultative process for facilitation of the annual review by the Assembly of the
developments in ocean affairs. Since 2008, the Ad Hoc Open-ended Informal Working Group has started to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

In assisting and facilitating the work of the General Assembly mentioned earlier, the Secretary-General bears particular responsibility for the effective and consistent implementation of UNCLOS. The office of the Secretary-General prepares annual and periodic reports on developments relating to ocean affairs and the law of the sea, and on specific topics of current interest. It also develops and maintains the appropriate facilities for a state to deposit charts and geographical coordinates concerning maritime zones.

The Secretary-General is responsible for the collection, compilation and dissemination of information on ocean affairs and the law of the sea, for promoting better understanding of UNCLOS and other related agreements, for preparing for the meetings of the relevant bodies, for providing the necessary services for such meetings, and for strengthening training activities in ocean and coastal area management and development.

In practice, moreover, the Division for the Ocean Affairs and the Law of the Sea (DOALOS) of the Office of Legal Affairs principally carries out the responsibilities entrusted to the Secretary-General mentioned earlier. DOALOS, which serve as the secretariat to UNCLOS and to the Meetings of States Parties, also provides secretariat services to the Open-Ended Informal Consultative Process on Oceans and the Law of the Sea, and to CLCS.

Additionally, special reference should be briefly made to the roles played by the Meeting of States Parties to UNCLOS. The Meeting is convened in accordance with Article 319, paragraph 2 (e) of UNCLOS, and the office of the Secretary-General provides the necessary services for such meetings. The Meeting’s roles include the election of members of ITLOS and of CLCS, the consideration of the annual report of ITLOS, and the reception of information from the Secretary-General of the ISA and the Chairman of the CLCS on the activities of these bodies.

IV. Conclusions

In conclusion, the following three points should be made.
First, UNCLOS has institutionalised its implementation mechanism in order to ensure the uniform and consistent application of UNCLOS and a coordinated approach to its overall implementation. To this date, one may say, the three newly established bodies (i.e. the CLCS, the ISA, and the ITLOS) have been carrying out their missions effectively. Each of these bodies has effectively fulfilled its own responsibilities in its own field of specialization: that is, the consideration of the extension of the continental shelf, the administration of deep seabed mining activities, and the peaceful settlement of maritime disputes.

Second, it is important to recall that UNCLOS also presupposes the idea that the Convention and other relevant agreements need to be implemented through competent and responsible institutions and bodies at domestic, regional, and global levels. In this multi-layered implementation mechanism, each functions mostly separately, but sometimes they function together jointly.

Third, some other UN family institutions and UN subsidiary bodies have also been functioning in cooperation with the three major bodies discussed above. In order to ensure the consistent and effective implementation of UNCLOS, it is very important not only for States Parties, but for all relevant organizations and bodies to keep close relations with each other through various forms of cooperation and coordination with respect to ocean affairs and the law of the sea.

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1 This is a modified and extended version of the oral presentation given at the International Seminar titled ‘The Thirtieth Anniversary of the UNCLOS from the Perspective of the Commission on the Limits of the Continental Shelf as its Organ’ held on 11 July 2012, organized by the Ocean Policy Research Foundation (OPRF). The author of this article is grateful for all the comments given at the Seminar.

2 With respect to the implementation mechanisms of UNCLOS, see, for example, the following: Alan Boyle, ‘Further Development of the 1982 Convention on the Law of the


Article 76 (8) reads as follows:

> 8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

Under the title of Commission on the Limits of the Continental Shelf, Annex II of UNCLOS deals with the functions and rules concerning governance of the Commission.

Article 3 (1) of Annex II of UNCLOS reads as follows:

> 1. The functions of the Commission shall be:

(a) to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with article 76 and the Statement of Understanding on 29 August 1980...

(b) to provide scientific and technical advice, if requested by the coastal State concerned during the reparation of the data referred to in subparagraph (a).

Article 3 (2) of Annex II reads as follows:

> 2. The Commission may co-operate, to the extent considered necessary and useful, with the Intergovernmental Oceanographic Commission of UNESCO, the International Hydrographic Organization and other competent international organizations with a view to exchanging scientific and technical information which might be of assistance in discharging the Commission’s responsibilities.

Article 76 (8) is widely open for various ways of interpretation. More detailed discussion of this issue is well beyond the scope of this study and is left for further research of another opportunity.

Article 8 of Annex II

http://www.un.org/Depts/los/clcs_new/commission_members.htm#Members (accessed
11 Article 2 (1) of Annex II
12 Article 6 of Annex II
13 Article 76, paragraph 8
14 See the following webpages which is relevant here;
   1 October 2012)
15 See the notes verbales of China and Korea, respectively. See also the following article: 池島
   大策「国連海洋法条約における島の法的定位と紛争解決手続－沖ノ鳥島をめ
16 Article 9 of Annex II. See also the following site (Particularly, pp. 4-5, paragraphs 15-20): 
   pdf (accessed 1 October 2012)
17 See for example the following: Satya Nandan, 'Administering the Mineral Resources of
   the Deep Seabed', in David Freestone, Richard Barnes & David M. Ong, (Eds.), The
   Law of the Sea: Progress and Prospects, Oxford University Press, 2006, pp. 75-92; Rothwell
   & Stephens, supra n. 3, pp. 136-143.
18 See for example James Harrison, Making the Law of the Sea: A Study in the Development of
19 Article 2 of the 1994 Agreement
20 Article 157 (1)
21 Article 136
22 Article 137
23 Article 140 (2)
24 Articles 140 (1), 144 (1), 148, 150, 152 (2), 160 (2) (f) (i)
25 Article 158
26 Article 160, paragraph 1, reads as follows:
   '1. The Assembly, as the sole organ of the Authority consisting of all the members, shall 
   be considered the supreme organ of the Authority to which the other principal organs 
   shall be accountable as specifically provided for in this Convention. The Assembly shall 
   have the power to establish general policies in conformity with the relevant provisions of 
   this Convention on any question or matter within the competence of the Authority.'
27 Article 160, paragraph 2
28 See David Anderson, Modern Law of the Sea: Selected Essays, Martinus Nijhoff Publishers,
29 Article 166
30 1994 Agreement, Annex
31 Article 162
32 1994 Agreement, Annex
33 Article 170
34 1994 Agreement, Annex, Section 2
UNCLOS Annex III, Articles 3, 8-9
Article 153
Annex, Section 2
The official website of ITLOS is the following: http://www.itlos.org/
As for the fundamental things about ITLOS, see the following: Anderson, supra n. 28, pp. 505-517.
Article 279
Article 280
Article 1 of Annex VIII stipulates that the special arbitration procedures may be used with respect to the following categories of disputes: (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, or (4) navigation, including pollution from vessels and by dumping.
Article 287, paragraphs 4 & 5
Article 187 of UNCLOS; Article 14 of Annex VI
Article 2, Annex VI
Article 15, Annex VI
See Anderson, supra n. 28, pp. 519-546.
Articles 186 & 187, Section V of UNCLOS; Articles 35-40, Annex VI
Case No. 17, Advisory Opinion given on 1 February 2011
Articles 159 (10) & 191 of UNCLOS.
Article 191 of UNCLOS
Article 34, paragraph 1, ICJ Statute
Case No. 3 & 4, Provisional Measures, (NZ v. Japan; Australia v. Japan).
Case No. 10, Provisional Measures, Ireland v. UK.
As of the time when this paper was written.
See Harrison, supra n. 18, pp. 237-277.
A/RES/65/37, paragraph 5
See Rothwell & Stephens, supra n. 3, pp. 312-319; Harrison, supra n. 18, pp. 200-236.
See Harrison, supra n. 18, pp. 154-199.
Article 53, paragraph 9
Articles 149 and 303
