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**JURISDICTION OF LAW OF THE SEA COURTS AND TRIBUNALS IN MIXED
BOUNDARY DISPUTES OVER LAND AND MARITIME TERRITORY**

Master's Thesis

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INTRODUCTION

Starting from the time of Grotius, the law of the sea has been a substantial part of the material of contemporary international law. The United Nations Convention on the Law of the Sea (LOSC, the Convention) plays a crucial role in efforts to gather the world together in a solid agreement on an international regime for the oceans. This agreement, which included all the key issues of maritime law, was caught inside the crossfire of ideological wars of state events after a long list of failed attempts. The ideological wars of the past additionally perpetrated incomplete and ill-informed perceptions about the Convention that obstruct rational evaluation. However, its innovativeness, focus on widespread ratification and the presence of a large number of compromises are not in doubt.

One of the weaknesses of international law is that states were reluctant to accept the jurisdiction of courts and arbitrators in principle. Particularly with recognizing many issues of international law that appear in reference to the oceans. The United Nations Convention on the Law of the Sea in the regulation of the sea became a remedy that removes this weakness in an essential manner. No comparable treaty with such huge mandatory compromissory clauses has ever been widely ratified before. The extensively ratified Convention has exhibited that, with time and care, consensus may be achieved on reconciling essential protection, economic, environmental and different interests; that this consensus can be expressed in fairly precise norms and regulations that narrow the issues and limit disputes.

So-called compulsory jurisdiction is one of the most debated and, in its way, revolutionary the provision. It is a big step compared to traditional international dispute resolution, which usually requires the consent of the parties before referring the dispute to arbitration or litigation. The main feature of this system is that LOSC consists of dispute settlement device which seen as a part of its "package deal". Namely, Part X established the obligatory dispute settlement procedures which might be binding on a state once it becomes a party to of the Convention. In this matter, the difference between 'mandatory' and 'non-mandatory' jurisdiction under the LOSC should be clarified. The term "mandatory jurisdiction" actually means consensual jurisdiction where the consent of both parties has been given before their dispute arises by signing the Convention.

Article 287 of LOSC consists a list of judicial bodies which can exercise the compulsory jurisdiction, inter alia the International Tribunal for the Law of the Sea established in accordance with Annex VI; the International Court of Justice; an arbitral tribunal constituted in accordance with Annex VII and a special arbitral tribunal constituted in accordance with Annex VIII. These institutions which frequently named Law of the Sea tribunals (LOS tribunals, maritime) in legal literature have a right to exercise jurisdiction under compulsory procedures entailing binding decisions.

A large number of countries were not ready to undertake obligations under a mandatory jurisdiction, since they were aware of the threat of control over their actions. Therefore, it was provided a choice of four judicial authorities as well as the narrow range of disputes that could not be excluded from compulsory settlement procedures by state parties using limitations and exclusions. The possibilities to avoid compulsory procedures for certain types of disputes established in Article 298 of the Convention demonstrate the clear intention to remove sea boundaries delimitation disputes from the mandatory judicial settlement. These complex mechanisms are designed to protect the sovereignty of states by means of giving the states parties the freedom to select the way by which they will settle their differences.

One of the types of frequently encountered, but controversial cases is mixed boundary disputes over land and maritime territory usually named ‘mixed disputes’ in academical literature and connected to a dispute regarding a maritime boundary delimitation. These disputes inevitably included the concurrent claims of an unresolved dispute concerning rights over land territory¹. In some disputes, there is no clear division among other types of dispute and the case connecting a law of the sea. For instance, establishing land boundaries might have an impact on the delimitation of a sea boundary or maritime delimitation need the continental or

¹ P. Chandrasekhara Rao, *Delimitation Disputes under the United Nations Convention on the Law of the Sea: Settlement Procedures*. -T.M. Ndiaye, R. Wolfrum. *Law of the Sea, Environmental Law and Settlement of Disputes – Liber Amicorum Judge Thomas A. Mensah*. Leiden: Martinus Nijhoff Publishers 2007. p. 884.

insular land sovereignty decision. The question as to whether this type of dispute falls under the compulsory jurisdiction of the Convention remains open.

Opinions on the resolution of mixed disputes are divided. Some authors believe that if territorial disputes are related to the interpretation or application of the Convention, LOS tribunals will have jurisdiction over them. Their opponents express the opinion that no issue that related to the questions of the land sovereignty matters can be resolved without the consent of the state parties under any circumstances. The main controversial issues are disagreement over the limits of enforceable dispute resolution, which could potentially violate the sovereign rights of states and the ability of LOS tribunals to effectively carry out their functions as stipulated in the Convention.² Irina Buga opined on this matter:

“ The jurisdictional dilemma of LOS tribunals concerning mixed disputes seems to adversely affect their effectiveness, potentially enabling some States to circumvent dispute resolution on the grounds that land sovereignty issues are involved.”³

Judicial practice also does not provide an unambiguous answer to the question of the jurisdiction of mixed disputes related to unresolved issues of land sovereignty. The tribunal is faced with a sophisticated situation. On the one hand, ensuring the rights and freedoms of countries guaranteed by the Convention is of great importance for ensuring the rule of law in the law of the sea, and on the other hand, any court statement that may directly or indirectly affect the delimitation dispute can be negatively perceived not only by the participating countries, but and the international community itself. As it was mentioned in one of the decisions, the creators of the Convention aimed to design a balanced text and to esteem the expressed sensitivi-

² R. G. Volterra, G. F. Mandelli, Á. Nistalc, The Characterisation of the Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait. – 33 *The International Journal of Marine and Coastal Law*, 2018, p. 616-617

³ I. Buga. Territorial Sovereignty Issues in Maritime Disputes: A jurisdictional Dilemma for Law of the Sea Tribunals. – 27 *The International Journal of Marine and Coastal Law* 2012, p. 91

ty of States to the mandatory settlement of disputes concerning sovereign rights, maritime territory and in even greater degree regarding land territory.⁴

Another difficulty that is not emphasized in the legal literature is the lack of the generally accepted concept of “mixed dispute”. An arbitrary interpretation of the term not only adds fuzziness to the argument, but also complicates the acceptability of knowledge.

There are currently no monographs on the jurisdiction of the LOS tribunals over mixed disputes related to land sovereignty. However, these issues are raised in monographs on related topics. For example, Maria Gavouneli in her book “Functional Jurisdiction in the Law of the Sea” analyzes the features of jurisdiction under the Convention, its basic premises and essential compromises, its evolution and its ability to meet new challenges of our time. The book *Dispute Resolution in the Law of the Sea*, “Dispute Resolution in the Law of the Sea” by Igor V. Karaman, is aimed at studying the resolution of disputes that have arisen since the entry into force of the Convention and when analyzing the role of mandatory procedures entailing binding decisions through the prism of general international law and jurisprudence.

Futhermore, numerous articles are devoted to the jurisdiction under mixed disputes. For instance, Irina Buga, in the article *the Jurisdictional Dilemma for Law of the Sea Tribunals* article, examines whether the maritime tribunals under the LOSC have jurisdiction over dispute resolution on maritime borders, related to simultaneous issues of sovereignty on land. The article “Some Reflections on the Operation of the Dispute Settlement System of the UN Convention on the Law of the Sea During its First Decade” by Robin Churchill examines the choice of means for the mandatory settlement of disputes, jurisdictional issues in such cases *Exceptions to Mandatory Jurisdictions and the Application of Temporary Measures*. Natalie Klein in the article *Expansions and Restrictions in the the Convention Dispute Settlement*

⁴ An Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland, Award (Mar. 18, 2015), para 219

Regime: Lessons from Recent Decisions concludes that there is no solid doctrine that analyzes and explains contemporary case law, while most studies focus on the analysis of a specific mixed dispute.

However, a comprehensive analysis to identify cause that influence the decision on the jurisdiction of the LOS tribunals over mixed disputes has not been done. In current study the author intends to establish the factors which influence on LOS tribunal's jurisdiction in "mixed disputes".

Hypotheses of current research are:

- There is no generally accepted definition of "mixed disputes" in the legal literature.
- The LOS tribunals have developed a unified approach regarding the factors that are used to determine the jurisdiction of the tribunal over mixed disputes.

The primarily object of the study is LOS tribunal's jurisdiction over mixed sea disputes which involves concurrent land sovereignty.

The thesis consists of four chapters. The first chapter contains a historical digression of the basic doctrines of the law of the sea and an analysis of the dispute resolution mechanism of the Convention on the Law of the Sea. The second chapter explains the issues of sovereignty disputes jurisdiction under LOS tribunals, the threat of forum shopping and the Domination Principle. In third chapter the author analyzes the definitions of mixed disputes, their classification and issues of jurisdiction, features of subjective jurisdiction and The Doctrine of 'Implied Powers'. The fourth chapter contains an analysis and comparison of LOS tribunals legal positions in An Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland, An Arbitration before an arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People's Republic of China and Dispute Con-

cerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. The Russian Federation). This chapter provides an analysis of the factors that are considered in court decisions when determining jurisdiction in mixed disputes.

The author mainly uses analytical legal method. Comparative method was used for analysing various definitions of “mixed dispute” definitions to understand what core stated features of these types of dispute, comparisons of the case details and decision tests in Chagos and South China Sea arbitration decisions to determine the main factors affecting the jurisdiction of mixed disputes related to land sovereignty, and to compare the circumstances of the dispute between Ukraine and Russia with the Chagos and South China Sea arbitration in order to determine the likely response of the Tribunal and the factors that could affect it.

The primary source used for the research are the United Nations Convention on the Law of the Sea, awards on an Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland and an Arbitration before an arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People's Republic of China. Academic articles and books, new articles and treaties which related to the LOS tribunals and courts jurisdiction and other topics related to this thesis are used as secondary sources for comprehensive research of the issue from different angles. The study of the legal position of the tribunals regarding mixed disputes related to land is limited to the three cases that received the most coverage in the scientific literature and the press. Since mixed disputes are not a legal term and are not used by the tribunals to characterize disputes, it is not possible to establish all disputes that fall into this category and are related to issues of land sovereignty and analyze them.

The research has importance for improving the efficiency and development of the LOSC settlement of disputes system. Mixed disputes are relevant and usually occur when relations between countries are tense and diplomatic methods do not work. If a definition is given and a

comparative analysis of the tests develops a doctrine that expresses consensus for states, the rights enshrined in the convention will be decided by legal methods, which will allow countries to adhere to established rules. While the possibility of a broad interpretation of the general provisions of the Convention leaves room for political influence, the Convention therefore loses its force.

I am greatly indebted to my family for moral support and encouragement throughout my study.

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The keywords for this thesis are international law, public international law, settlement of disputes, maritime law, procedural law, jurisdiction, arbitration, court procedure.

I. SETTLEMENT OF DISPUTES UNDER UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

1.1 Historical Development of International Law of the Sea. The battle of *Mare Clausum* and *Mare Liberum*

Prolonged and fierce legal disputes prompted by the geopolitical interests of powerful states and their “pretensions to the dominion of the immense waters of the globe”⁵ gave birth to modern law of the sea. The doctrine of *Mare Liberum* according to which the sea is *res communis* so it cannot be appropriated by particular country was supported by England and Holland who experienced the rapid growth of naval powers in the late Middle Ages while Spain and Portugal tried to keep the sea monopoly using *Mare Clausum* doctrine.⁶ Therefore, main path of international law of the sea can be compared with “tug-of-war between the sovereignty of the coastal State, which atavistically purports to expand its powers further and further away from land; and the freedom of the high seas, a principle partly created as a reflexion of the impossibility to subdue the vast expanse of water for long centuries in human history.”⁷

The most prominent supporter of the first doctrine, Hugo Grotius argued that “the sea is one of those things which is not an article of merchandise and which cannot become private property. Hence, (...) no part of the sea can be considered as the territory of any people whatsoever”⁸, “can be neither seized nor enclosed; ocean, which rather possesses the earth than is by it possessed.”⁹ However, these allegations did not apply to the internal seas.

⁵ . T. W. Fulton, *The sovereignty of the sea : an historical account of the claims of England to the dominion of the British seas, and of the evolution of the territorial waters : with special reference to the rights of the fishing and the naval salute*. New Jersey: The Lawbook Exchange LTD, 2002, p. 3.

⁶ T.T.B. Koh, *The Origins of the 1982 Convention on the Law of the Sea*. — 29/1 *Malaya Law Review*, 1987 6

⁷ M. Gavouneli. *Functional Jurisdiction in the Law of the Sea*. Leiden/Boston: Martinus Nijhoff Publishers, 2007, p. 1, 2.

⁸ H. Grotius. *Freedom of the Sea or The right which belongs to the Dutch to take part in the East Indian Trade*. New York: Oxford University Press, 1916, p. 34

⁹ *Ibid*, p. 37

His opponent John Selden endeavored to prove that the sea was virtually as capable of appropriation as terrestrial territory. Selden refuted the argument that the sea cannot be appropriated, indicating to rivers, lakes, and springs as illustrations. Moreover, he negated that the sea is inexhaustible, and noted that its usage by others may reduce its galore and damnify its use by its owner.¹⁰

Further developments in the field of international law of the sea led to its codification. The United Nations Convention on the Law of the Sea (LOSC)¹¹ as the new instrument created an integral normative system reconciliating the intellectual duel between Grotius's *Mare Liberum* and Selden's *Mare Clausum*.¹²

1.2. United Nations Convention on the Law of the Sea. Settlement of Disputes under LOSC

One of the weaknesses of international law is that states were reluctant to accept the jurisdiction of courts and arbitrators in principle, which is particularly fair with recognizing many issues of international maritime law. the United Nations Convention on the Law of the Sea became a remedy for this weakness in an essential manner. There was no international universal treaty with such strict mandatory compromissory clauses has ever been widely ratified before so the adoption of the treaty in 1982 has often been referred to as the second most significant event in the history of contemporary international law after the adoption of the UN Charter in 1945 and a “monument to international cooperation”.¹³ There are few international universal treaties, which are be so widely accepted and recognized by the world community. the United Nations Convention on the Law of the Sea presents an amalgamation of compromises and trade-offs stemmed from very various and often contradictory interests. The fun-

¹⁰ R. P. Anand. *Origin and Development of the Law of the Sea*. The Hague: Martinus Nijhoff Punlishers, 1983, p. 81

¹¹ United Nations Convention on the Law of the Sea. Montego Bay 10.12.1982, e.i.f. 16.11.1994.

¹² T. W. Fulton, *The Sovereignty of the Sea*. Blackwood, 1911. Republished by The Lawbook Exchange LTD, New Jersey, 2002, page 371.

¹³ L.D.M. Nelson, *Reflections on the 1982 Convention on the Law of the Sea*. – D. Freestone, R. Barnes, D.M. Ong. *The Law of the Sea: Progress and Prospects*. Oxford: OUP, 2006, p.28.

damental feature of the dispute settlement system under Part XV of the convention is encouragement of these reasonable compromises. Moreover, the purpose of the dispute settlement system is to assure a consecutive and congeneric applying of LOSC norms and exegesis of its substantive provisions.

The dispute settlement system under the United Nations Convention on the Law of the Sea is fairly avowed to be one of the most advanced and compound dispute resolution systems in modern international treaties. It has been mentioned to as “one of the most far-reaching and complex systems of dispute settlement to be found anywhere in international law”¹⁴.

In many facets the system is very progressive and unexampled. LOSC settlement of disputes suggests diplomatic and judicial means of dispute settlement which are common in general international law. What it does complementarily, however, is that it creates some new obligations for the state parties. The most essential one is a mandatory use of the procedures entailing binding decisions if parties have not settled the dispute themselves. The parties can evade their disputes from the compulsory procedures through the declaration under article 298 of the United Nations Convention on the Law of the Sea as well as without a declaration under article 297, the obligation to refer their disputes to mandatory conciliation remains. Consequently, the dispute resolution mechanism guarantees that actually any dispute over its interpretation or application will not be unsettled: if the diplomatic means do not lead to positive results, the compulsory mechanisms will come to the fore. Another significant achievement of the dispute settlement system is that it offers all the formal means possible in the international dispute settlement: the ICJ, two ad hoc arbitral tribunals, with the general and specialised jurisdictions, and also entered the International Tribunal for the Law of the Sea.

An extensive ratification exhibits that consensus may be achieved on reconciling essential protection, economic, environmental and different interests; that this consensus can be ex-

¹⁴R. R. Churchill, Some Reflections on the Operation of the Dispute Settlement System in the UN Convention on the Law of the Sea during Its First Decade, in: D. Freestone et al. (eds.), *The Law of the Sea: Progress and Prospects*. Oxford: OUP, 2006. p.388

pressed in fairly precise norms and regulations that narrow the issues and limit disputes.¹⁵ LOSC dispute resolution mechanism is quite complex and progressive. The obligatory adjudicative procedures are a big step from traditional international dispute settlement in which consent of the parties is usually required before the submission of a dispute to arbitration or adjudication.

The mandatory dispute settlement provisions are criticised as endowing to the potential fragmentation procedurally as well as substantively. Another part of critics was regarding the narrow range of disputes that could not be excluded from compulsory settlement procedures by state parties using limitations and exclusions.¹⁶ However, current provision was reached by the compromise which allowed to broaden the number of states which signed the United Nations Convention on the Law of the Sea. The possibilities to avoid compulsory procedure for certain type of disputes established in Article 298 demonstrate the clear intention to remove sea boundaries delimitation disputes from the mandatory judicial settlement. These complex mechanisms are designed to protect the sovereignty of States by means of giving the states parties the freedom to select the way by which they will settle their differences. Therefore, enlargement of the list of disputes that should be resolved only by mandatory settlement procedures without using limitations and exclusions would be able to significantly reduce the number of states participants, which would decrease the effectiveness of the United Nations Convention on the Law of the Sea. Wide ratification is crucial for the development of international sea law.

¹⁵ Stevenson, John R., Oxman, Bernard H. The Future of the United Nations Convention on the Law of the Sea. — 88 *The American Journal of International Law* (3), p. 499

¹⁶ R. Rayfuse. The Future of Compulsory Dispute Settlement under the Law of the Sea Convention. — 683 *Victoria University of Wellington Law Review*), p.36.

II. JURISDICTION OVER LAND SOVEREIGNTY DISPUTES

2.1. Impetuous rise in number of specialised international tribunals

Present international dispute resolution is characterised by a sweeping rise in number of different specialised international courts and tribunals. Law of the sea is not the exclusion: under article 287 of the United Nations Convention on the Law of the Sea the parties have a choice to submit their disputes between four institutions. Contradictory jurisdiction takes place when the same dispute potentially can be under the jurisdiction of numerous international fora. It derives from the basic principle of international adjudication that states have the right to choose the mechanisms for resolving disputes among them.¹⁷ The freedom of choice is significant to international dispute settlement under the United Nations Convention on the Law of the Sea and more widely, general international law..¹⁸ This opportunity has risen questions regarding plausible adverse impacts of forum-shopping. It is assumed that if the LOS tribunals and courts be ever encountered with such an issue, they will find a solution in accordance with collegiality, mutual respect, solidarity and civility.

The issue of contest jurisdictions wherein treaty overlapping, although reasonably compound, afford be settled via the employment of Articles 281 and Article 282 of the United Nations Convention on the Law of the Sea . But these tools are not useful with regard to a dispute comprising international maritime law as well as other domains of international law. Led by their relative appropriate law, tribunals could govern variously generating two reciprocally-excluding decisions.

¹⁷ T.A. Mensah. *The Proliferation of International Judicial Organs: Institutional and Substantive Questions – Comments.* – N.M. Blokker, H.G. Scermers (eds.). *Proliferation of International Organisations – Legal Issues*, The Hague: Kluwer Law International, 2001, p. 352.

¹⁸ I.V. Karaman, *Dispute Resolution in the Law of the Sea*. Leiden/Boston: Martinus Nijhoff Publishers, 2012, p. 2012, p. 252.

Another supposed negative side of forum-shopping is the subsequent procedural and substantive fragmentation of international law. The opportunity of submitting the same dispute to several courts and tribunals is *per se* a procedural fragmentation of international law. There are different tools to contend with it including Articles 281 and 282, Article 296 and partially Article 311(2) of the United Nations Convention on the Law of the Sea, *lis pendens*, judicial comity and the common understanding of litigants.

The substantive fragmentation of international law takes place in several cases. It already exists because of the normative conflicts between two or more treaties, and envisages the tribunals revealing such conflicts if two specialized tribunals apply different *lex specialis* to the same dispute or whether one general tribunal applies *lex generalis* and a specialized tribunal implements specialized law. However, if different tribunals apply same norms in a distinct manner, the institutional fragmentation of law due its existence to the functioning of international tribunals.

The jurisdictional issues which arised in the disputes not only did not prevent their resolution, but also conduce arbitral tribunals to expound several considerable concepts and doctrines. For example, treaty parallelism between the United Nations Convention on the Law of the Sea and its implementation agreements covered by Articles 281 and 282 of the Convention has become a significant contribution to the development of procedural law.

Various suggestions have been proposed including foundation the court of appeal or tribunal des conflicts; extension of the advisory jurisdiction; establishment of a preliminary ruling system, etc¹⁹. However, taking into attention tremendous practical issues regarding their implementation, other less radical approaches can be more helpful. For instance, former Presi-

¹⁹ Ibid. p. 317

dent of International Court of Justice Higgins stated: “We must read each other’s judgments. We must have respect for each other’s judicial work. We must try to preserve unity among us unless context really prevents this”.²⁰

The case law of the LOS tribunals demonstrates that most of them have used the same approaches of treaty interpretation as other tribunals do, broadly relied upon treaties, customary law and general principles of law. They intended to refer to each other’s respective case-law and follow the jurisprudence of other international tribunals. The influence of the LOS tribunals is further evidenced by the fact that other international tribunals use them frequently to support their argumentation. The number of international bodies is not an reason the fragmentation of law per se. The issue stemmed from the treaty-making system enabling conflicts of legal norms while the new courts and tribunals like litmus paper just reveal this fragmentation.

2.2. Domination Principle

Principle of Domination²¹ (the land dominates the sea) is widely used in judicial decisions. Being a principle of customary law, it parallels the LOSC system and interacts with it in disputes regarding the interpretation or application of both substantive provisions of the law of the sea and other fields of public international law. The parallel is indirectly acknowledged in the preamble of the LOSC concerning matters unregulated by the Convention and its Article

²⁰ R. Higgins, Rosalyn. A Babel of Judicial Voices? — 55 *The International and Comparative Law Quarterly*(4), 2006, p.804.

²¹ B.Kwiatkowska, *The Law & Practice of International Courts and Tribunals*, Lauterpacht, 01 Jan 2002, Volume 1: Issue 3, 651 pages , 2–3.

76 (1). The full implications can only become visible after they encounter in a particular dispute.²²

There are a lot of provisions regarding state sovereignty and its limits in maritime zones in the convention. Namely, the state sovereignty extends over land territory and internal or archipelagic waters to the territorial sea, the air space over the territorial sea and to its bed and subsoil²³, State sovereignty over the territorial waters implies that the state has legislative competence²⁴ related to navigation, protection of cables and pipelines, fisheries, pollution, scientific research, and customs, fiscal, immigration and sanitary regulations²⁵ in its territorial waters. Therefore, the marine space itself persists open for the traditional freedoms of navigation and communication, however sovereignty pertains the living and mineral resources and to the sources of energy derived from water.²⁶

The forcefulness of a significant part of the maritime law, including the norms related to the entitlement and delimitation of maritime zones, connected to another branch of international law, e.g. provisions regarding the acquisition of territorial sovereignty. The scope of application of the maritime where the land meets the sea remains questionable as well as the jurisdiction of relevant tribunals over such maritime disputes.²⁷

²² B.B.Jia, *The Principle of the Domination of the Land over the Sea: A Historical Perspective on the Adaptability of the Law of the Sea to New Challenges*. — 58 *German Yearbook of International Law*, 2014, p. 4

²³ LOSC, Article 2

²⁴ Churchill, Robin R., Lowe, Alan V. *The Law of the Sea*. Manchester: Manchester University Press, 1999, p. 92.

²⁵ LOSC, Article 21

²⁶ R.J. Dupuy, D. Vignes, *A Handbook on the New Law of the Sea*. Dordrecht: Martinus Nijhoff Publishers, 1991, p. 291.

²⁷ Jia, p. 5-6

Another question occurring with the Principle of Domination pertains to the impact of its implementation upon the scope of the United Nations Convention on the Law of the Sea and hence the jurisdiction of LOS tribunals over territorial disputes.²⁸

Prima facie this dilemma connected to be relevant merely to the jurisdiction of specialized tribunals. However, the International Court of Justice may not be obliged to limit its jurisdiction by reason of this restriction of the United Nations Convention on the Law of the Sea if the dispute was submitted according to its Statute or a special agreement among the parties. In accordance with Article 38 of Statute of the International Court of Justice, the function of the Court is to decide pursuant to international law "such disputes as are submitted to it." Therefore, there is no restriction regarding types of disputes as well as the formulation of the disputes which can be considered by the International Court of Justice.²⁹

But when a dispute is referred to the Court by a LOSC State Party that has made a declaration in accordance with Article 287 of the United Nations Convention on the Law of the Sea by selecting a Court for the purposes of this article, the jurisdiction is ultimately determined by Article 288 (1) of the United Nations Convention on the Law of the Sea, which confirms that in this case the court has jurisdiction in regarding the relevant part of the dispute. Therefore, the Court will have to limit its jurisdiction over the dispute to the part that relates to the interpretation or application of the United Nations Convention on the Law of the Sea.

The main presumption of this section is that if a dispute mixes aspects of territorial acquisition and the right to the sea, an exclusion statement submitted in accordance with Article 298 (1) (a) (i), the United Nations Convention on the Law of the Sea will completely exclude the

²⁸ L. Brilmayer, N.Klein. Land and Sea: Two Sovereignty Regimes in Search of a Common Denominator, – New York University Journal of International Law and Politics 33, 2000–2001, p. 703, 749, 767.

²⁹ Statute of the International Court of Justice, 26 June 1945, Article 38.

dispute from the scope of Section XV. 2 of the Convention. Accordingly, there is no residual dispute regarding the mandatory procedures for consideration.

Article 298 of the United Nations Convention on the Law of the Sea is an optional restriction on the jurisdiction of the tribunals under Article 287 of the Convention and reflects the Domination Principle only in respect of historical bays or titles. But this principle can play a more fundamental role in limiting the jurisdiction of these tribunals. This may indeed preclude the applicability of the United Nations Convention on the Law of the Sea as a whole before the issue of territorial sovereignty is determined in a particular case. In accordance with article 287 of the Convention, if the tribunals are unable to resolve such a problem, they may have to relinquish jurisdiction over the dispute, including maritime claims. Therefore, the fundamental role played by the Principle of Domination is that if States parties intend to avoid the mandatory procedures provided for in section 2 of part XV without the United Nations Convention on the Law of the Sea declarations in accordance with article 298, this principle can be applied. Since the Convention is generally silent on territorial acquisition issues, with a few exceptions, if a dispute explicitly includes a component regarding territorial sovereignty as a prerequisite for determining the degree of the right to the sea and for any subsequent delimitation, it will be excluded from these procedures.³⁰

Jurisdiction is granted in accordance with the United Nations Convention on the Law of the Sea, as in other treaties, within certain limits which are determined by the objectives and objects of the relevant agreement, to which the participating states have given their consent. The absence of substantive rules of territorial sovereignty in the United Nations Convention on the Law of the Sea determines the existence of appropriate jurisdiction on the part of tribunals for territorial disputes related to article 287 of the Convention.³¹ These recent disputes should be construed as not related to the interpretation or application of the United Nations Convention on the Law of the Sea. If the International Court of Justice accepts a statement from the

³⁰ Jia, p. 24

³¹ A. E. Boyle, *Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction*. — 46 *International & Comparative Law Quarterly*(1), 1997, p. 37, 49–50.

Convention. State Party on the basis of a declaration by the latter in accordance with Article 287 of the United Nations Convention on the Law of the Sea , it is in the same jurisdictional straitjacket, so to speak, like other tribunals under this article. There is no differential treatment between these tribunals under article 287 of the Convention. The coherence of the land and sea laws touched upon at the beginning of this section with reference to the Court's view of the North Sea continental shelf cases³² ultimately becomes a duopoly in accordance with the current the United Nations Convention on the Law of the Sea rules. This is the inherent structure of the Convention, which leads to a deficit in the jurisdiction of the tribunals.

Article 298 of the United Nations Convention on the Law of the Sea is an optional restriction on the jurisdiction of the Tribunals in accordance with article 287 of the Convention and reflects the principle of domination only with respect to historical titles. But this principle, of course, can play a more fundamental role in limiting the jurisdiction of these tribunals. This may indeed preclude the applicability of the Convention as a whole before the issue of territorial sovereignty is determined in a particular case. If, in accordance with Article 287 of the United Nations Convention on the Law of the Sea , the tribunals are unable to resolve such a problem, they may have to relinquish jurisdiction over the dispute, including claims in maritime matters. Therefore, the fundamental role played by the Principle of Domination is that if States parties seek to avoid the mandatory procedures provided for in section 2 of part XV without the Convention statements under Article 298, this principle can be invoked.

The Principle of Domination does not mean the complete transfer of coastal sovereignty to the adjacent areas of the sea, but only some sovereign rights of the state over its territory. Its influence is significantly weakened by Freedom of the seas principle, which for centuries has had a restraining effect on the expansion of national sovereignty in the oceans, including the airspace and the adjacent seabed and subsoil. After achieving a balance between freedom and control, the rule of law in the oceans is ensured. Thus, the principle served useful purposes in

³² North Sea Continental Shelf (Federal Republic of Germany/Netherlands), International Court of Justice, February 20, 1969

the development of modern law of the sea and was indirectly endorsed in article 76 (1) of the United Nations Convention on the Law of the Sea.³³

2.3. Jurisdiction over sovereignty disputes

The Tribunal fairly noted that the reason for the lack of attention to the issue of jurisdiction over territorial sovereignty in LOSC is that none of the participants in the Third United Nations Conference on the Law of the Sea “expected that a long-standing dispute over territorial sovereignty would ever be considered to be a dispute 'concerning the interpretation or application of the Convention.’”³⁴ LOSC governs matters on the law of the sea while the issue of territorial sovereignty is regulated by a different set of rules of international law regarding, in particular, the acquisition and the exercise of sovereignty over land territory, which is outside the framework of the maritime law.

Given the inherent delicacy of the issue of territorial sovereignty, many states do not want to refer sovereignty disputes to third-party procedures, not to mention such issues being covered by the United Nations Convention on the Law of the Sea mandatory procedures that can be initiated unilaterally and entail binding decisions. Ambassador Reynaldo Galindo Paul, El Salvador emphasised that the need for exemptions from mandatory jurisdiction with respect to matters directly related to territorial the integrity of the state, otherwise a number of states could dissuade them from ratifying the Convention or even signing it.³⁵ This is a convincing argument put forward by the Tribunal that, if land sovereignty disputes were considered as

³³ Jia, p. 31

³⁴ Chagos Arbitration, Award, para.215.

³⁵ S. Rosenne, L.B. Sohn, United Nations Convention on the Law of the Sea 1982: A Commentary, Vol. V. — Dordrecht: Martinus Nijhoff, 1989. para. 297.1.

relating to the interpretation or application of the United Nations Convention on the Law of the Sea, the Convention would allow States parties to exclude sovereignty disputes from mandatory procedures.³⁶

Although it is safe to say that the scope of the mandatory dispute resolution procedures covers issues governed by the Convention, but not land sovereignty disputes, the United Nations Convention on the Law of the Sea does not explicitly provide jurisdiction for disputes involving both of the foregoing.³⁷

Maritime rights derive from the sovereignty of a coastal state over land,³⁸ whereas territorial sovereignty and maritime issues are closely interlinked. This is particularly relevant in the case of delimitation of maritime borders, which most often involves the simultaneous consideration of the issue of sovereignty over land or island territory within the delimitation zone. From another point of view, territorial sovereignty and maritime delimitation can be differentiated from each other. The debate about sovereignty stays the same, regardless of how close it is to the discussion of delimitation of the sea and conversely.

In accordance with Article 298 (1) (a) (i) disputes subject to exclusion from mandatory procedures or mandatory conciliation proceedings relate to those that are primarily subject to the jurisdiction of these procedures. The first paragraph allows States parties to exclude disputes concerning the delimitation of the maritime boundary or historical bays or names (“maritime

³⁶ Chagos Arbitration, Award, paras. 216, 217.

³⁷ Buga, p.63, 68.

³⁸ An Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern, Award of 18.03.2015, Final Transcript, 660:19–20, pages 450:14–20.

delimitation disputes”) from the mandatory procedures in accordance with Part XV of Part 2 of the Convention, provided that there are “future” disputes between this category must be transferred to a mandatory conciliation procedure, the procedure in accordance with Section 2 of Annex V of the United Nations Convention on the Law of the Sea , which can be initiated unilaterally, but entails an optional decision. A dispute about sovereignty is not mentioned in the first paragraph of this provision. Regardless of whether the dispute on the delimitation of the maritime boundary belongs to the dispute on sovereignty, only this dispute on maritime delimitation as such can be excluded in accordance with this paragraph.

Mandatory dispute settlement according to Section 2 of Part XV is provided to states for the settlement of disputes related to the delimitation of the territorial sea, the continental shelf and the EEZ, as well as the historical title unless the states decide to exclude these disputes by virtue of Section 298 (1) (a) (I AM). With regard to the delimitation of the maritime border, Articles 15, 74 and 83 expressly provide that States resort to Part XV procedures if no agreement is reached within a reasonable period of time.³⁹ albeit article 298 (a) (i) gives states the right to exclude disputes about the maritime boundary from mandatory settlement provisions. Articles 297 and 298 establish the restriction and exclusion of enforcement. But some form of dispute settlement was supported, which entailed a binding decision because delimitation disputes are likely to be more common when areas under the jurisdiction of coastal states are more extensive, and these areas can be dangerous if they have not been finally settled by binding decision.

³⁹LOSC, Articles 15, 74(2) , 82 (2)

III. THE JURISDICTION OVER MIXED DISPUTES UNDER UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

3.1. Mixed dispute under United Nations Convention on the Law of the Sea and its definition

Mixed disputes remain frequently occurring and debatable in LOS tribunals practice. In some cases there is no clear division among the dispute related a law of the sea and other types of dispute. For instance, establishing land boundaries might have an impact on the delimitation of a sea boundary or maritime delimitation need the continental or insular land sovereignty decision. Disputes over land in particular often touch upon historical or cultural issues of great national significance, and even a small loss of claimed territory can be seen as a threat to State sovereignty⁴⁰ and security,⁴¹ providing "fertile ground for nationalistic rhetoric and flag-waving."⁴² Claims over territories capable of generating maritime zones often arise because states are eager to influence boundary delimitations and extend their control over maritime resources, rather than due to the intrinsic value of the land itself.⁴³

One of the additional difficulties that affects the transparency and comprehensibility of provisions regarding the jurisdiction of mixed disputes is the lack of a legal definition of this type of dispute. Being an academic term, the concept of "mixed dispute" undergoes modifications when mentioned in academic articles by different authors, who rarely refer to each other.

⁴⁰ R.J. Dupuy and D. Vignes, page 292.

⁴¹ J. Guoxing, Sino-Japanese Jurisdictional Delimitation in East China Sea: Approaches to Dispute Settlement. – S.-Y. Hong, J. M. Van Dyke (eds.), *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Dordrecht: Martinus Nijhoff, 2009, p. 77.

⁴² Ibid, p.23.

⁴³ Smith, Robert W.. *The Effect of Extended Maritime Jurisdictions*. – Albert W. Koers, B.H. Oxman (eds.), *The 1982 Convention on the Law of the Sea*. Honolulu: University of Hawaii, Law of the Sea Institute, 1984, p. 337

There are few mentions about “mixed disputes” in the pleadings. Namely, in Chagos case Mauritius insisted on qualifying the dispute with UK as a mixed dispute involving land and sea⁴⁴ and refers to analogy with mixed disputes relating to delimitation characterised by Chandrasekhara Rao⁴⁵ while United Kingdom stated that “[m]ixed dispute”(…) as that term has generally been used and understood in the context of law of the sea disputes(…) is well aware, there is a debate as to whether a court or tribunal under Part XV of the Convention can decide mixed disputes, i.e. disputes over maritime boundaries that raise incidental issues of territorial sovereignty”.⁴⁶ Both sides of the process define mixed disputes and these definitions differ. In particular, the definition given by Mauritius is much broader. However, these differences are not discussed and are not used in the subsequent argumentation.

In legal literature there are various definitions of mixed disputes. The general framework that can be traced in these definitions is a combination of several issues, one of which is related to the Convention or the law of the sea (namely matters regulated by the Convention⁴⁷, a maritime boundary delimitation,⁴⁸ maritime delimitation,⁴⁹ the interpretation or application of substantive rules of the law of the sea⁵⁰, LOSC part⁵¹, law of the sea issues addressed by the Convention⁵²) and other kind of issue (usually land questions (land sovereignty⁵³, the concur-

⁴⁴ An Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland, Memorial of the Republic of Mauritius, Volume 1, 01.08.2012, para 5.28

⁴⁵ Chandrasekhara Rao, 2007, p. 891.

⁴⁶ An Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland, Rejoinder submitted by United Kindom, 17.03.2014., para 4.7

⁴⁷ Buda, 63, 68.

⁴⁸ P. Chandrasekhara Rao, “Delimitation Disputes under the United Nations Convention on the Law of the Sea: Settlement Procedures” in T.M. Ndiaye & R. Wolfrum (eds.), Law of the Sea, Environmental Law and Settlement of Disputes – Liber Amicorum Judge Thomas A. Mensah, Leiden, Martinus Nijhoff Publishers, 2007, 884.

⁴⁹ Buda, 60

⁵⁰ Jia, p. 4

⁵¹ A.Proelss. The Limits of Jurisdiction *ratione materiae* of UNCLOS Tribunals, - 46 Hitotsubashi Journal of Law and Politics, 2018, p.56

⁵² B.H. Oxman. Courts and Tribunals: The ICJ, ITLOS, and Arbitral Tribunals. – D. R. Rothwell et al , The Oxford Handbook of the Law of the Sea. Oxford: Oxford University Press 2015 p.400.

⁵³ Buda, 63, 68.

rent claims of an unresolved dispute concerning rights over land territory⁵⁴) the interpretation or application of other branches of public international law,⁵⁵ questions over disputed territory⁵⁶, other issues⁵⁷). Some definitions include also a link between two issues (inseparable interrelation which makes impossible “to render a decision on the interpretation and application of the Convention without adjudicating at the same time on the territorial issues involved, there is no other option for the LOS tribunal than to determine the relative weight of the dispute”⁵⁸, inevitable inclusion,⁵⁹ the interpretation or application⁶⁰). Thus, despite the general idea and structure, the definitions are fundamentally different, which makes the term vague. The spelling of the term in quotation marks by most authors is indicative; this emphasizes the instability and conventionality of the definition. However, there are attempts to classify disputes. For instance, fisheries disputes, marine environmental disputes, maritime boundary disputes and historic title disputes can be distinguished based on the object.⁶¹

Differences in the definition of the term are an indicator that the opinion of researchers diverges not only regarding the regulation of mixed disputes, but also understanding what is a mixed dispute. However, the lack of a generally accepted definition of mixed disputes and the active use of this term demonstrate the need for a legal definition and differentiation of this type of dispute.

⁵⁴ Chandrasekhara Rao, 2007, p. 884.

⁵⁵ Jia, p. 4

⁵⁶ Buda, 60

⁵⁷ Oxman, 2015, p. 400

⁵⁸ A. Proelss. The Limits of Jurisdiction *ratione materiae* of UNCLOS Tribunals, — 46 *Hiroshima Journal of Law and Politics*, 2018

⁵⁹ Chandrasekhara Rao, 2007, p. 884.

⁶⁰ Jia, p. 4

⁶¹ N. Klein. Expansions and Restrictions in the UNCLOS Dispute Settlement Regime: Lessons from Recent Decisions. — 15 *Chinese Journal of International Law*, 2016, p.410-415.

3.2. The jurisdiction *ratione materiae* of Law of Sea tribunals.

Limitations concerning bringing a claim under LOSC include *ratione temporis*, *ratione loci*, *ratione personae*, and *ratione materiae* requirements.⁶² The subject matter of the dispute is connected with the jurisdiction *ratione materiae*. LOSC consists the provision that “a court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation and application of this Convention, which is submitted to it in accordance with this Part.” Following arguments should be considered regarding mandatory dispute settlement system of the United Nations Convention on the Law of the Sea : determining the existence of a dispute, the limits of subject-matter jurisdiction, subject-matter jurisdiction and admissibility of claims in mixed disputes.⁶³ First of all, court or tribunal should determine if there is a dispute among the parties which can impulse the dispute settlement proceeding under the United Nations Convention on the Law of the Sea. Furthermore, the existence of claims which implicate rights and obligations under the Convention should be confirmed. Moreover, if despite the fact that the claims that meet the requirements mentioned below they can be disregarded since they are predominantly related with the interpretation and application of other rules of law outside the scope of the United Nations Convention on the Law of the Sea .

Article 279 determines the obligation for States to settle all disputes under LOSC peacefully. There is the choice between a number of dispute resolution fora, including, notably, the ITLOS and arbitral tribunals under Annex VII. Pursuant to Article 288(1), these shall have "jurisdiction over any dispute concerning the interpretation or application of this Convention," including a general competence to decide disputes relating to maritime boundaries. There is no explicit provision on whether the tribunals can deal with ancillary territorial sovereignty issues. However, in view of the fact that the law of the sea is an integral part of international

⁶² G. Schwarzenberger, *International Law as applied by International Courts and Tribunals*. Volume IV. London: Stevens & Sons Limited, 1986, p. 432..

⁶³ J. Harrison, *Defining Disputes and Characterizing Claims: Subject-Matter Jurisdiction in Law of the Sea Convention Litigation*, *Ocean Development & International Law*(2017), 48:3-4, p. 269-283.

law,⁶⁴ a LOS tribunal could address issues of customary international law and "other questions outside the four corners of the Convention and other agreements"⁶⁵ necessary to reach a decision on the matter before it, including, conceivably, questions of territorial sovereignty.⁶⁶ Article 288(2) extends this jurisdiction to any dispute submitted by means of an international agreement, as long as it relates to the times of the Convention⁶⁷ granting wide jurisdiction over all disputes related to the law of the sea.⁶⁸

There is availability of mandatory procedures involving binding decisions where no settlement has been reached and subject to exclusions and limitations detailed in the third section of Part XV.⁶⁹ The jurisdiction of any court or tribunal which established in accordance with the the United Nations Convention on the Law of the Sea is referred to the Article 288 (1) is 'over any dispute concerning the interpretation or application of th[e] Convention which is submitted to it in accordance with this Part'. Consequently, there are two crucial jurisdictional questions related to subject matter jurisdiction are: if the dispute regards the interpretation or application of LOSC and is the dispute inserted any exception or limitation under the third section of Part XV.

Characterisation of the dispute depends on if it in the scope of the United Nations Convention on the Law of the Sea . In practice, all mentioned issues mainly depend on the formulation of

⁶⁴ A. Yankov, 'The International Tribunal for the Law of the Sea and the Comprehensive Dispute Settlement System of the Law of the Sea. - P.C. Rao and R. Khan. The International Tribunal for the Law of the Sea: Law and Practice. The Hague: Kluwer Law, 2001, p. 45.

⁶⁵ G. Eiriksson, Gudmundur. The International Tribunal for the Law of the Sea. The Hague: Martinus Nijhoff Publishers, 2000, p.113..

⁶⁶ A. Yankov, p. 44-45.

⁶⁷ T.Treves. A System for Law of the Sea Dispute Settlement. — D. Freestone, R. Barnesand D. Ong, The Law of the Sea: Progress and Prospects Oxford: Oxford University Press, 2006, p. 417, 418; Eiriksson, p. 114.

⁶⁸ L.D.M. Nelson, 'The International Tribunal for the Law of the Sea : Some Issues. – P. Chandrasekhara Rao and R. Khan, The International Tribunal for the Law of the Sea: Law and Practice. The Hague/Boston : Kluwer Law International, 2001, p. 53.

⁶⁹ LOSC, Art.286

the matter⁷⁰. However, it is responsibility of judges to decide whether there is a dispute concerning the interpretation or application of the Convention.⁷¹

Mixed disputes more frequently cause conflicts than 'pure' maritime delimitations,⁷² are a sign of traditionally rooted hostility between States. So settlement of the dispute can avert escalation of political and economic tensivity. Mixed disputes constantly have an impact on whole international community.

Wolfrum asserted that territorial issues in maritime disputes fell entirely within the jurisdiction of the LOS tribunals⁷³ in accordance with the principle of efficiency. But issues of land sovereignty and maritime issues are closely interlinked, in spite of these differences.⁷⁴ In both cases, the question of sovereignty arises, but has a completely different nature: while in the first case the question arises of how to obtain legal title, in the second case there is the question of establishing boundaries that give rise to the applicability of a completely different set of requirements of international law. Thus, a court having the competence and jurisdiction to resolve mainly maritime issues can go beyond the scope of its constituent instrument to resolve auxiliary issues of land sovereignty.⁷⁵

Some scholars insist on the need to separate mixed disputes and identify issues that directly relate to the United Nations Convention on the Law of the Sea in the interpretation of 298 (1) (a) (i). Although often disputes related to sovereignty or other rights to land territory often

⁷⁰ Boyle, p. 38.

⁷¹ LOSC, Art. 288(4):

⁷² S.A. Kocs, Territorial Disputes and Interstate War, 1945-1987. — 57 The Journal of Politics, 1995, p.159.

⁷³ A.O. Adede, The System for Settlement of Disputes under the United Nations Convention on the Law of the Sea: A Drafting History and Commentary. Dordrecht: Martinus Nijhoff Publishers, 1987, p. 279, 284.

⁷⁴ Buga, p. 69

⁷⁵ Ibid.

arise due to various circumstances, in connection with disputes on the delimitation of the maritime border, which relate to the interpretation or application of Articles 15, 74 and 83. But these disputes do not fall into the category "disputes regarding the interpretation or application of this Convention within the framework of the mandatory jurisdiction of the courts and tribunals of Part XV."⁷⁶ Moreover, mixed disputes are not identified in LOSC.⁷⁷

Article 298 (1) (a) (i) allows States parties to exclude disputes relating to the delimitation of the maritime boundary or historical bays or names ("disputes concerning delimitation of the sea") from the mandatory procedures in accordance with Section 2, Part XV of the Convention. This opportunity contains the condition that disputes that may arise in the future between this category should be referred to a mandatory conciliation procedure, which can be initiated unilaterally, but entails an optional decision. Regardless of whether the dispute on the delimitation of the maritime boundary relates to a dispute on sovereignty, only this dispute on the maritime delimitation as such can be excluded in accordance with this paragraph, regardless of whether the delimitation of the maritime border is related to a dispute on sovereignty.

Even taking into account the mixed dispute, only the "dividing part" of the mixed dispute can be excluded. Neither sovereignty disputes, nor mixed disputes fall under the jurisdiction of forced conciliation by virtue of the first paragraph of Article 298 (1) (a) (i), therefore, none of them can be excluded from compulsory conciliation provided for in 298 (1) (a) (i). Thus, "any dispute" in the last paragraph is a "future" dispute about maritime demarcation, but a dispute about sovereignty, which should be considered simultaneously. In a mixed dispute, "any dis-

⁷⁶ Karaman, p. 209

⁷⁷ S.A.G. Talmon, Stefan A.G.. The Chagos Marine Protected Area Arbitration: A Case Study of the Creeping Expansion of the Jurisdiction of UNCLOS Part XV Courts and Tribunals. — *International & Comparative Law Quarterly* 65, 2016, p. 946

pute”, which should be excluded from the mandatory conciliation procedure, refers to the “part of the delimitation” of the mixed dispute, and not to the mixed dispute as a whole.⁷⁸

Thus, the lack of clear regulation and a clear definition of mixed dispute leaves a large room for interpretation approaches. This situation is one of the reasons for the conflicting judicial practice, which will be discussed later.

3.3 The Doctrine of ‘Implied Powers’

The concept of ‘implied powers’ establishing that international tribunals may have competences implicitly presented under their constitutive instrument has strong support.⁷⁹ But a power can be implied whether it is essential for the exercise of the tribunal's jurisdiction in dispute resolution, and if it is coherent with the letter and spirit of the constitutive treaty. Same idea expressed the general principle *non ultrapetita*,⁸⁰ which states that a tribunal “must not exceed the jurisdiction conferred upon it by the Parties, but it must also exercise that jurisdiction to its fullest extent. This principle is similar to legal maxim, used in India with similar meaning *Ut Res Magis Valeat Quam Pereat*.⁸¹

⁷⁸W. Qu. The Issue of Jurisdiction Over Mixed Disputes in the Chagos, Marine Protection Area Arbitration and Beyond. — Ocean Development & International Law, 2016 p. 47

⁷⁹ P. Gaeta, ‘Inherent Powers of International Courts and Tribunals’. - L.C. Vohrah and others (eds.), *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese*, The Hague: Kluwer Law International, p. 466, 503.

⁸⁰ Continental Shelf (Libyan Arab Jarnahiriya/ Malta), Judgment, I. C.J. Reports 1985, 13, 23.

⁸¹ G. Fitzmaurice, *The Law and Procedure of the International Court of Justice 1951-4: Treaty Interpretation and Other Treaty Points*. — 33 British Year Book of International Law, 1957, p. 203, 211-12.

States should not be tolerated to use the fact that LOS tribunals may not finally endorse jurisdiction over a mixed dispute as an excuse to abstain from initiating proceedings under LOSC.⁸² To the extent that an issue of territorial sovereignty is encompassed or essentially related to other substantial law of the maritime questions, the tribunal should decide what evaluation is to take priority in deciding jurisdiction.⁸³

Therefore, a case that seems to be a 'mixed dispute' could be submitted to mandatory procedures, leaving it to the court or the tribunal to define how it should be distinguished and if it can be settled without raising sovereignty issues.⁸⁴ For example, the boundary could be drawn up to a point where it would not be influenced by the disputed territory,⁸⁵ just as maritime boundaries in past cases have been drawn in such a way so as to avoid involving interests third-parties. Article 298 (1) (a) (i) does not exclude the possibility of transferring mixed disputes to the LOS tribunals, but only introduces some limitations. Therefore, in addition to the possibility of applying Article 300, LOS tribunals could settle the “mixed disputes” by limiting the area under consideration to avoid issues of land sovereignty-a strategy often feasible in practice.⁸⁶ Thus if the land question is not the main subject of claims, the LOS tribunals frequently find ways to settle or avoid simultaneous territorial issues in predominantly sea disputes. Furthermore, article 300 could be a loophole by providing an independent jurisdictional basis for resolving mixed disputes in cases of outrageous abuse of right.

⁸² Buga, p. 89

⁸³ N. Klein. *Dispute settlement in the UN Convention on the Law of the Sea*. Cambridge: Cambridge University Press, 2005, p. 42

⁸⁴ Chandrasekhara Rao, 2007. p. 884.

⁸⁵ B.H. Oxman, 'International Maritime Boundaries: Political, Strategic, and Historical Considerations' (1994) 26 *University of Miami Inter-American Law Review*, p. 243.

⁸⁶ Buga, p. 90

The role of LOS tribunals in the maritime boundary delimitation involving the issues other than the pure delimitation of maritime spaces remains controversial. The interaction between the United Nations Convention on the Law of the Sea , international trade law dispute settlement and other potential parallel regime remains open for research, discussion and interpretation. Moreover, some disputes, which may potentially arise under the United Nations Convention on the Law of the Sea (for example, disputes related to sea-bed mining), have not yet even emerged so far due to the present limits of technology and economy. The inconsistency of approaches and a certain understatement is also associated with relatively modest judicial practice. In many matters, the position of the courts and tribunals remains unexpressed since “while hypothetical issues are stimulating and academically challenging, they are beyond the ken of arbitral tribunal determining real issues of fact and law”⁸⁷

⁸⁷ *Marffezini v. Kingdom of Spain* (Case No. ARB/97/7), Procedural Order of an Arbitral Tribunal No.2 of 28 October 2000, 124 ILR 6, at p.8

IV. LEGAL POSITION OF LOS TRIBUNAL REGARDING MIXED DISPUTES

4.1. An Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland

Consider the dispute between Mauritius and the United Kingdom over the Chagos archipelago, a group of islands in the Indian Ocean⁸⁸ that arose as far back as 1980, when both states claimed sovereignty over the islands. United Kingdom purchased the Chagos Archipelago from Mauritius, its former colony, in 1965 for £3m and created a region named the British Indian Ocean Territory. From 1967 to 1973, it exiled the islands' population to make way for a military base.⁸⁹ When the United Kingdom unilaterally established a protected area around the archipelago in 2010, Mauritius filed its claim with the Tribunal, claiming that it is a coastal state and has sovereignty over the archipelago⁹⁰.

Mauritius' first submission was divided to two parts by tribunal: what is the nature of the issue and is the dispute inherently a matter of territorial sovereignty, does Article 288(1) permit a tribunal to define issues of disputed land sovereignty as a mandatory precondition to a definition of rights and duties in the adjacent sea? ⁹¹

With the purpose of determination its jurisdiction, the tribunal referred to Fisheries Jurisdiction (Spain v. Canada) to state that the position of both parties is to consider where a dispute

⁸⁸ S. J.T.M. Evers & M. Kooy, *Eviction from the Chagos Islands: Displacement and Struggle for Identity against Two World Powers*. Leiden / Boston: Brill, 2011

⁸⁹ Chagos Islands dispute: UN backs end to UK control, 22.05.2019, BBC News, <https://www.bbc.com/news/uk-48371388#> (date of access - 26.11.2019). Available in English.

⁹⁰ Chagos Arbitration, Award, para, 5, 103.

⁹¹ Ibid, para 206.

is examined and Nuclear Tests (New Zealand v. France) to accentuate the significance of to segregate the real issue in the case and to detect the object of the claim.⁹² Furthermore, the record and history that Mauritius had contested its sovereignty over the archipelago against the United Kingdom before courts were analysed of the tribunal. It indicated that “the pleadings in these proceedings are replete with assertions of Mauritian sovereignty over the Chagos Archipelago”.⁹³

Moreover, the sovereignty of states is an highly delicate issue connected to territorial sovereignty, so it is not rational to consider a State declaration to withdraw some dispute settlement procedures under Article 298 accepts as more substantive matters of territorial sovereignty⁹⁴ The tribunal concludes that "a minor issue of territorial sovereignty" does not always impedes the jurisdiction over a case if the issue is considered as an auxiliary part of a dispute regarding the interpretation or application of LOSC.⁹⁵

In the Tribunal's decision in relation to Mauritius' second submission, the significance of having the contemplation to "the context of the submission" and the manner of its presentation, was stated. The submission was also regarded as a dispute concerning sovereignty over the Chagos Archipelago which was the primary reason of the submission. Therefore, the a question of the interpretation or application of the term “coastal state” was a facet of the larger dispute⁹⁶ . Nuclear Tests (New Zealand v. France) case was used to recognize the real object of the Mauritius' claim and it was regarded as to endorse the claim to sovereignty over the archipelago.

⁹² Ibid, para 208.

⁹³ Ibid, para 209.

⁹⁴ Ibid, para 216.

⁹⁵ Ibid, para 221.

⁹⁶ Ibid, para 229.

Finally, the tribunal came to conclusion that of Mauritius' submissions regarding lawful actions of the United Kingdom as a "coastal State" went to an issue of land territorial sovereignty.⁹⁷ In this connection, jurisdiction under LOSC was not expanded over disputes in relation to land territorial sovereignty.⁹⁸ Furthermore, if a dispute is touched upon the interpretation or application of the LOSC, its jurisdiction enlarges to determination of fact or ancillary definitions of law as are essential to settle the dispute.⁹⁹

The tribunal stated its lack of jurisdiction over the first of two submissions of Mauritius relating to sovereignty dispute, but unanimously found that it had jurisdiction for the fourth submission of Mauritius on if the declaration of the Marine Protected Area was reconcilable with the obligations of the United Kingdom under the United Nations Convention on the Law of the Sea.¹⁰⁰ But the tribunal did not argue why it had jurisdiction to assess the reconcilability of the declaration by the United Kingdom of the Marine Protected Area with the obligations related to the "coastal State" according to the United Nations Convention on the Law of the Sea without a previous decision on if the United Kingdom was actually the "coastal state." The tribunal started its assessment of its jurisdiction by assessing the dispute,¹⁰¹ especially by defining "where the relative weight of the dispute lies."¹⁰² The tribunal mentioned about an extensive record, extending across a range of fora and instruments, documenting the Parties' dispute over sovereignty.

Moreover, it underlined that the outcomes of a finding that the United Kingdom is not the coastal state broaden beyond the issue of the validity of the Marine Protected Area.¹⁰³ In con-

⁹⁷ Ibid, para 211, 212, 229.

⁹⁸ Ibid, para 221.

⁹⁹ Ibid, para 220.

¹⁰⁰ Ibid, para. 323.

¹⁰¹ Ibid, para 208, 211.

¹⁰² Ibid, para 211.

¹⁰³ Ibid, para 211.

sideration of these two observations, the tribunal concluded the dispute with regard to the first submission of Mauritius is designated as pertaining to land sovereignty over the Chagos Archipelago.»¹⁰⁴ Accordingly, the tribunal came to conclusion that it lacks jurisdiction for Mauritius's first submission. However, the tribunal noticed in *obiter dictum*, that if the dispute was rightly characterized as an LOSC dispute, it would have had the jurisdiction to resolve "ancillary" issues of land sovereignty.¹⁰⁵

Judges Wolfrum and Kateka did not support the decision of the majority and proposed a different approach, namely the judgment on the assessment of the dispute should be based on objective grounds devoting special attention to the formulation of the dispute used by the applicant state.¹⁰⁶ They pointed out that the divergent viewpoints on the coastal state are the dispute before the tribunal and the question of sovereignty over the Chagos Archipelago is solely an aspect in the Mauritius' reasoning and not to be settled by the tribunal.¹⁰⁷

In accordance with Article 298(1)(a)(i) any dispute which obligatorily includes the concurrent consideration of any unresolved dispute in relation to sovereignty or other rights over continental or insular land territory should be removed from submission to mandatory conciliation. Mauritius stated that this provision excludes sovereignty disputes or mixed disputes from compulsory conciliation.¹⁰⁸ Furthermore, only disputes regarding maritime delimitation or historical bays or titles can be excluded from mandatory procedures and mandatory conciliation. The *a contrario* reading of this provision justifies the conclusion that without a declaration under Article 298(1)(a)(i), disputes in relation with maritime delimitation or historical bays or

¹⁰⁴ Ibid, para 212.

¹⁰⁵ Ibid, para 221.

¹⁰⁶ An Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern, Dissenting and Concurring Opinion of Judge James Kateka and Judge Rudiger Wolfrum, para. 5.

¹⁰⁷ Ibid, para. 17.

¹⁰⁸ Chagos Award, Final Transcript, 660:19–20, para. 218.

titles fall within the jurisdiction of compulsory procedures of LOSC. Consequently, the *a contrario* reading argument presented by Mauritius is unsound.

The tribunal considered that it does not peremptorily foreclose that in some instances a minor issue of land territorial sovereignty could truly be secondary to a dispute relating to the interpretation or application of the LOSC.¹⁰⁹ It also noticed the fact that the United Kingdom considered the Mauritius' fourth submission as the "non-sovereignty claims."¹¹⁰ while the tribunal characterised the fourth submission as being a dispute regarding the interpretation or application of LOSC which contains the subsidiary issue of "who is the coastal state" and continued to regard the fourth submission on the assumption that the United Kingdom was the "coastal state."

However, if "maritime rights derive from the coastal state's sovereignty over the land,"¹¹¹ where both questions are in dispute, the dispute regarding sea rights shall be secondary to the issue on land sovereignty, not vice versa.¹¹² Furthermore, whether the decision on a land sovereignty question is *sine qua non* for the ascertainment for maritime rights issue, a court or tribunal which have no jurisdiction over the former should abstain from exercising its jurisdiction over the latter on the grounds of the principle arising in the Monetary Gold Case¹¹³ and the principle of state consent (states identify and acknowledge the rules they consider binding upon themselves)¹¹⁴.

¹⁰⁹ Chagos Arbitration, Award, para. 221.

¹¹⁰ Chagos Arbitration, Award, para. 231.

¹¹¹ North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), 1969, I.C.J. Reports, 51, para. 96; Aegean Sea Continental Shelf (Greece v. Turkey), 1978, I.C.J. Reports, 36, para. 86; Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), 2001, I.C.J. Reports, 97, para. 185.

¹¹² The South China Sea Arbitration (The Philippines v. China). Potential Jurisdictional Obstacles or Objections,"— Chinese Journal of International Law, 2014; p. 663, 692.

¹¹³ Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States), 1954, I.C.J. Reports,

¹¹⁴ J.S. Watson, State Consent and the Sources of International Obligation. — 86 Jurisprudence of International Law: Classic and Modern Views, The American Society of International Law Proceedings, 1992, p.111.

The decision of the tribunal on whether the United Kingdom was the “coastal state” in the Chagos Arbitration, could not be made without the consent of the United Kingdom. It was the prerequisite for determining the reconcilability of the United Kingdom’s declaration of the Marine Protected Area with the obligations related to the “coastal state” in accordance with LOSC. There would have been no dispute regarding the compatibility of the Marine Protected Area with the substantive provisions of the United Nations Convention on the Law of the Sea invoked by Mauritius if the tribunal has affirmed its jurisdiction over the first and second submissions and has considered the United Kingdom as not the “coastal state”.

Finally, Mauritius attained the tribunal accept and exercise its jurisdiction concerning one of its submissions, but the procedural rights of Mauritius under the LOSC are relied on the hypothesis that United Kingdom is the “coastal state” of the Archipelago, which loosens Mauritius’s sovereignty claim to the Chagos Archipelago, instead of endorsing it.¹¹⁵

4.2. An Arbitration before an arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People's Republic of China

The Philippines and China have diplomatic conflicts over the Scarborough Shoal and Spratlys particularly. The islands are predominantly unpopulated, but they may have reserves of natural resources around them.¹¹⁶ On 22 January 2013, the Philippines initiated arbitration proceedings with the Permanent Court of Arbitration in The Hague, the Netherlands, to clarify its

¹¹⁵ W. Qu. The Issue of Jurisdiction Over Mixed Disputes in the Chagos, Marine Protection Area Arbitration and Beyond. — *Ocean Development & International Law*, 2016 pages 49-50.

¹¹⁶ South China Sea: Tribunal backs case against China brought by Philippines, 12 .07. 2016, BBC news, <https://www.bbc.com/news/world-asia-china-36771749> (date of access - 26.11.2019). Available in English.

contradictory claims with China in the South China Sea. The case of *Philippines v. China* regarded China's maritime claims and activities in the South China Sea,¹¹⁷ inter alia, declarations that China's maritime claims rested on its nine-dash line are void, and that certain maritime features in the South China Sea are properly determined as rocks or low-tide elevations.¹¹⁸

The Philippines stated that concerning sovereignty, it accepts that a dispute regarding sovereignty over maritime features in the South China Sea exists among the parties and recognizes that the South China Sea dispute has more than one layer. However, the Philippines regards that this is irrelevant to the jurisdiction of the tribunal, because none of the Philippines' submissions need the tribunal to express any view at all as to the degree of China's sovereignty over land territory, or that of any other state."¹¹⁹

The Philippines asserted that none of its submissions consist requirements the tribunal to express any viewpoints at all as to the extent of China's sovereignty over land territory. Despite China's decision not participate in the proceedings, but the arbitration proceeded in accordance with the provisions of the United Nations Convention on the Law of the Sea for its absence.¹²⁰

¹¹⁷ An Arbitration before an arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People's Republic of China), Award, 12.07.2016, para. 2; An Arbitration before an arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People's Republic of China), Award on Jurisdiction and Admissibility, 29.10.2015, para 4-6.

¹¹⁸ South China Sea Arbitration, Award on Jurisdiction and Admissibility, para 99.

¹¹⁹ South China Sea Arbitration, Award on Jurisdiction and Admissibility, para 141.

¹²⁰ R. Beckman, The Tribunal Award: What It Means . — Special Issue on the South China Sea Arbitration, 2016, p.6.

China never appeared in the tribunal during the process. However, China expressed its position in a "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea". China had declared that the tribunal is lacked jurisdiction due to three reasons. Firstly, the territorial sovereignty over various maritime features is the subject issue. Consequently, the case is out of scope of the Convention and is not connected to the interpretation or application of the Convention. Secondly, parties of the dispute have an agreement regarding the settlement of pertinent disputes. Thirdly, even whether the case was subject to the procedure of the Convention the subject matter would still be connected to maritime delimitation because the Memorial concerns the interpretation or application of the United Nations Convention on the Law of the Sea.¹²¹

The tribunal asserted that the Position Paper and the Letter to the Netherlands and other communications by China will be treated for the arbitration and effectively constitute a plea regarding the jurisdiction.¹²²

The tribunal took into consideration that the Philippines insisted at all stages of the arbitration that it is not raising the question about the territorial sovereignty aspect of the dispute and regarding delimitation any maritime boundaries. Moreover, China had not accepted dispute settlement concerning maritime boundary delimitation in accordance with Part XV of the United Nations Convention on the Law of the Sea.¹²³

Like the *Mauritius v. United Kingdom* tribunal, the *Philippines v. China* tribunal started its determination of its jurisdiction by assessing the dispute.¹²⁴ Unlike the *Mauritius v. United-*

¹²¹ Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines, 2014/12/07, para. 14

¹²² South China Sea Arbitration, Award on Jurisdiction and Admissibility, para 1.1.1

¹²³ Ibid, para 8.

¹²⁴ South China Sea Arbitration, Award on Jurisdiction and Admissibility, 133.

Kingdom case, the Philippines v. China tribunal special test which consists of two parts: Submissions of the Philippines could be interpreted as connected to sovereignty whether it was convinced that either the resolution needs making a decision on sovereignty by the tribunal (expressly or implicitly); or the genuine objective of the claims was to advance its position in the land sovereignty dispute. Applying this two-part test to the facts of the case, the tribunal came to the conclusion that the dispute resolution did not need it to first render a decision on sovereignty, and that the real purpose of the applicant claims was not to advance its position in the land sovereignty dispute so the tribunal has jurisdiction over the dispute.”¹²⁵

The Tribunal concluded that it had jurisdiction over seven submissions out of fifteen in the Memorial and the rest of the submissions were considered in conjunction with the merits of the Philippines claims.¹²⁶ However, Disputes concerning the interpretation or application of the Convention are not considered to include the issue of territorial sovereignty. As for disputes relating to the interpretation or application of the United Nations Convention on the Law of the Sea, it is difficult to distinguish between a dispute over sovereignty on the territory and the title to a certain geographic feature, or conflict concerning maritime delimitation in the case of overlap. Therefore, if the Philippines discusses the territorial rights of islands, rocks, low tide altitude a little, the arbitration court concludes that it has no jurisdiction over such dispute.

The Tribunal held that “There is no question that there exists a dispute between the Parties concerning land sovereignty over certain maritime features in the South China Sea” and the diplomatic communications between the Parties also underpinned the existence of a dispute over sovereignty. However, Tribunal did not regard sovereignty issues as a main ground of the dispute, even though a dispute can be associated with “several distinct matters” and “multi aspects”. Furthermore, the Tribunal quoted from the view of the ICJ in the United States

¹²⁵ South China Sea Arbitration, Award on Jurisdiction and Admissibility, 153.

¹²⁶ South China Sea Arbitration, Award on Jurisdiction and Admissibility, para. 397-412.

Diplomatic and Consular Staff in Tehran that there are no reasons to “decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects, however important”¹²⁷

Submissions of the Philippines could be interpreted as connected to sovereignty whether it was convinced that either the resolution needs making a decision on sovereignty by the tribunal (expressly or implicitly); or the genuine objective of the claims was to advance its position in the land sovereignty dispute. Applying this two-part test to the facts of the case, the tribunal came to the conclusion that the resolution of the claims did not need it to first render a decision on sovereignty, and that the real purpose of the Philippines' claims was not to advancement its position in the land sovereignty dispute so the tribunal has jurisdiction over the dispute.

The tribunal held that some of China's actions in the South China Sea were in opposition its obligations under the United Nations Convention on the Law of the Sea and, in some cases, were an breach of the rights of the Philippines. The Philippines did not raise any issue with respect to which state had a superior claim to sovereignty over the islands in the South China Sea. Consequently, the award of the tribunal does not address the basal dispute in the South China Sea - the competing claims to sovereignty over land. Furthermore, although the tribunal found that China's claim to historic rights in the nine-dash line is not consonant with the Convention, it did not mean that the nine-dash line per se is illegal or void. China is under no obligation to formally denounce the nine-dash line.¹²⁸

¹²⁷ South China Sea Arbitration, Award on Jurisdiction and Admissibility, para 152 (quoting United States Diplomatic and Consular Staff in Tehran (United States v. Iran)

¹²⁸ Beckman, p.6

The nine-dash line is still relevant because it demonstrates the location of the several islands in the South China Sea over which China declares sovereignty. The distinction is that as a party to LOSC, China can claim sovereignty only over those islands that meet the definition of an island in Article 121 of the Convention, that is, naturally formed areas of land surrounded by and above water at high tide.¹²⁹

The first and second claims submitted by Mauritius would have needed an implicit decision regarding sovereignty and “sovereignty was the real object of Mauritius’s claim”¹³⁰. Where land sovereignty composed of one aspect of a larger issue, the court or tribunal may have jurisdiction to resolve the dispute. Although if the issues primarily regard sovereignty”, it does not have jurisdiction. In the South China Sea case, the Tribunal referred to the Nuclear Tests case again for explanation the nature of the dispute and use the same approach in the Chagos case. Moreover, it invoked referred to the International Court of Justice in the United States Diplomatic and Consular Staff in Tehran and held that there are no grounds to refuse to resolve of one aspect of a dispute only because that dispute has other aspects.¹³¹

Since it had been expected that the United Nations Convention on the Law of the Sea did have jurisdiction over disputes regarding territorial sovereignty, both Mauritius and the Philippines insisted that there was no objective to ask the Arbitral Tribunal for delivering a decision as to which State owns sovereignty over the land.

However, the arbitration tribunal delivered different decisions. As for the first submission as well as the second submission in the Chagos case, it stated that the sovereignty dispute con-

¹²⁹ Ibid.

¹³⁰ Chagos Arbitration, Award, para. 153.

¹³¹ South China Sea Arbitration, Award on Jurisdiction and Admissibility, para 152 (quoting United States Diplomatic and Consular Staff in Tehran (United States v. Iran)

cerning the Chagos Archipelago does not related to the interpretation or application of the Convention,¹³² namely it came to conclusion that the nature of the dispute was territorial sovereignty while in South China Sea case, the first international judicial decision related China's activities in the South China Sea, which was initiated against China by one of the coastal states surrounding the South Sea, a paragraph concerning the Philippines' applications regarding the territorial sovereignty before any international courts.

If land sovereignty issues are undividable with maritime boundary delimitation, the existence of the conflict regarding sovereignty is an obstacle for resolving the issues guaranteed by Convention. But in the South China Sea case, the tribunal that it does not mean that a dispute over an issue that may be regarded in the course of a maritime boundary delimitation composes a dispute over maritime boundary delimitation itself¹³³. Therefore, the tribunal mentioned that territorial sovereignty questions do not directly influence dispute over maritime delimitation, which means that those two facets can be considered separately. The land sovereignty issues would not always eliminated from the deliberation. But tribunal noted no other arguments why an issue that may be taken into consideration along with question regarding maritime boundary does not immediately consists of a maritime boundary delimitation dispute.

The dissimilar decisions in Chagos case and South China sea case demonstrate that land sovereignty disputes are not necessarily prevented from the mandatory jurisdiction of a court or tribunal in accordance with Part XV of the United Nations Convention on the Law of the Sea . If land sovereignty does not compose the essence of the dispute or is a new form of the issue, the court or tribunal can have jurisdiction over the dispute. Notwithstanding, if a dispute related to the history of the struggle for sovereignty over land, the tribunal intends to refrain decision which may affect the further resolution of the dispute in favor of a politically weak party.

¹³² Chagos Arbitration, Award, para. 221.

¹³³ South China Sea Arbitration, Award on Jurisdiction and Admissibility, para 155

Article 298(1)(a)(i) of the United Nations Convention on the Law of the Sea enable exclusion of disputes which are connected to land sovereignty issues from mandatory dispute settlement procedure whether state make a declaration, which China took advantage of.¹³⁴ Therefore, it is the tribunal abstained from a broad interpretation of its competence to have jurisdiction.

The mission of tribunal on South China Sea case was tricky one. It holds great responsibility to guarantee that China's legitimate claims and coastal states of the South China Sea are not predisposed by its judicial findings. Another challenge is to clarification of controversial issues and the stimulation of the parties to cooperate¹³⁵ Tribunal underlined these objectives have enormous significance for generating the basis of its mandate.¹³⁶

4.3 Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation).

Crimea is a peninsula, which is located south of the Ukrainian region of Kherson and west of the Russian region of Kuban and surrounded by the Black Sea and the Sea of Azov. In 1954 it became a part of Ukraine (previously Ukrainian Soviet Socialist Republic), but 60 years later Russian-backed forces took control over the peninsula. Shortly after that, a local referendum was held and a majority of Crimean population voted in favour of Crimea joining the Russian Federation. Then president of Russian Federation signed a bill to annex Crimea. Accordingly,

¹³⁴ Yee, p. 689-690.

¹³⁵ Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece), 2011, ICJ Reports,, Dissenting opinion of Judge Xue, Dissenting opinion of Judge ad hoc Roucouas.

¹³⁶ Submissions would have an effect on the Philippines's sovereignty claims and accepts para.153.

the peninsula has been under administration of Russia, while Ukraine declares that it continues to be a part of Ukrainian territory in accordance with international law.¹³⁷

The annexation of Crimea can have practical as well as legal outcomes on sovereign rights of several states in the Black Sea, inter alia regarding the transport and exploitation of important hydrocarbon reserves.¹³⁸ Russia has considered that its annexation of the peninsula will influence the maritime boundaries delimitation in the Black Sea.¹³⁹

In 2016 Ukraine intended “to vindicate its rights as the coastal state in maritime zones adjacent to Crimea”¹⁴⁰ and instituted arbitration against Russian Federation before the Permanent Court of Arbitration under Annex VII of the United Nations Convention on the Law of the Sea. Russia is stealing resources, physically damaging Ukrainian fishermen and blocking the entry of vessels into Ukrainian ports due to the illegal construction of the Kerch Bridge, the Ministry of Foreign Affairs of Ukraine said.¹⁴¹ The case has been registered as the “Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait”.¹⁴²

¹³⁷ Annexia of Crimea by Russia: Chronology and International Reaction, 26.02.2018, Direct Channel, <https://prm.ua/ru/anneksiya-rossiey-kryima-hronologiya-i-mezhdunarodnaya-reaktsiya/> (date of access - 26.11.2019) Available in Russian.

¹³⁸ W.J. Broad, ‘In Taking Crimea, Putin Gains a Sea of Fuel Reserves’ The New York Times, 17.05.2014 ; available at <https://www.nytimes.com/2014/05/18/world/europe/in-taking-crimea-putin-gains-a-sea-of-fuel-reserves.html>. (date of access - 26.11.2019) Available in English.

¹³⁹ Agreement between the Russian Federation and the Republic of Crimea on the Accession of the Republic of Crimea in the Russian Federation and on Forming New Constituent Entities within the Russian Federation. Moscow. 18.03.2014, e.i.f. 21.03.2014, Article 4(3).

¹⁴⁰ Ministry of Foreign Affairs of Ukraine, ‘Statement of the Ministry of Foreign Affairs of Ukraine on the Initiation of Arbitration against the Russian Federation under the United Nations Convention on the Law of the Sea’, 14.09.2016; available at <http://mfa.gov.ua/en/press-center/news/50813-zajava-mzs-ukrajini-shhodo-porushennya-arbitrazhnogo-provazhennya-proti-rosijsykoji-federaciji-vidpovidno-do-konvenciji-on-z-morsykogo-prava>. (date of access - 26.11.2019). Available in English.

¹⁴¹ Ukraine asks to confirm its rights in the Black and Azov Seas - Foreign Ministry of Ukraine, 19.02.2018, Gordon, <https://gordonua.com/ukr/news/worldnews/ukrajina-prosit-pidtverditi-jiji-prava-v-chornomu-ta-azovskomu-morjah-mzs-ukrajini-232549.html> (date of access - 26.11.2019) Available in Ukrainian.

¹⁴² Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation), PCA Case No. 2017–06.

In accordance with the domination principle which was discussed in the second part of the thesis, territorial sovereignty over land is a condition precedent for rights over the sea.¹⁴³ Ukraine aims recognition of its rights “as the coastal state” in maritime zones which adjacent to the Crimean Peninsula,¹⁴⁴ so the proceedings may give a new round to disputes concerning the limits of LOSC tribunals jurisdiction over disputes connected to land sovereignty issues. The main challenge for Ukraine in bringing claims related to the Kerch Strait or Sea of Azov is if, pursuant the 2003 Agreement's definition of such waters as internal or historically exclusive to Ukraine and Russia, it has admitted that the United Nations Convention on the Law of the Sea is not relevant to disputes regarding these waters.¹⁴⁵

Russian Federation may assert that the tribunal lacks jurisdiction since the dispute encompasses a discrepancy regarding territorial sovereignty. Russian Federation may assert that the tribunal lacks jurisdiction since the dispute encompasses a discrepancy regarding territorial sovereignty. Since Article 288(1) of the United Nations Convention on the Law of the Sea limits the jurisdiction of LOS tribunals by disputes regarding the interpretation or application of this Convention, Ukraine has indicated the dispute as one connected to rights in adjacent to Crimea maritime zones. However, in view of Crimea annexation by Russia, the dispute involves territorial sovereignty questions, which are not in the frame of interpretation or application of the United Nations Convention on the Law of the Sea and are not fall the jurisdiction *ratione materiae* of the LOS tribunals.¹⁴⁶ Therefore the jurisdiction question remains. Both Chagos case and South China Sea case which rise this issue are unfavorable for Ukraine.¹⁴⁷

¹⁴³ North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, 1969, I.C.J. Reports, para 96.

¹⁴⁴ Ministry of Foreign Affairs of Ukraine, Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation), PCA Case No. 2017-06, Rules of Procedure, 18 May 2017.

¹⁴⁵ a Joint Statement by the President of Ukraine and the President of the Russian Federation on the Sea of Azov and the Strait of Kerch of 24 December 2003, Law of the Sea Bulletin 54 (2004), p. 131. States iterated the terms of the Cooperation Agreement and stated that “historically the Sea of Azov and the Strait of Kerch are internal waters of Ukraine and Russia”.

¹⁴⁶ Buga, p. 59, 68, 70-71; Oxman, 2015, p. 394, 400.

¹⁴⁷ P. Tzeng. Ukraine v. Russia and Philippines v. China: Jurisdiction and Legitimacy. — Denver Journal of International Law and Policy, Vol. 46, No. 1, 2017), p.2-3

There are several similarities between the position of Ukraine and Mauritius. Ukraine is claiming its rights as the coastal state in maritime zones adjacent to Crimean peninsula simultaneously with defending its sovereignty rights to sovereignty in other fora. For example, the Ministry of Foreign Affairs of Ukraine had reported earlier that Ukraine started the Initiation of Arbitration against the Russian Federation under the United Nations Convention on the Law of the Sea ¹⁴⁸. Furthermore, Ukraine suggested that the Russian Federation recognize the jurisdiction of the International Court of Justice and consider the issue of Crimea in its framework, , but received no answer.¹⁴⁹ . Therefore, the Ukraine v. Russia tribunal follows the Chagos case approach, it may come to the conclusion that the sovereignty question is the nature of the issue. But the tribunal can lead another conclusion in the light of the historical record of the dispute.¹⁵⁰

If the tribunal utilizes South China Sea approach, it should consider if the settlement of Ukraine's claims needs a preliminary decision on the sovereignty issue as well as is the promotion of Ukraine's position in the land sovereignty issue the true intention of its claims..¹⁵¹ According to the domination principle, Ukraine has the rights in the maritime zones adjacent to Crimea if it has sovereignty over the Crimean Peninsula. Therefore, the definition of sovereignty over the peninsula is needed to make a decision regarding the claim in Ukraine. The real aim of Ukraine's claims is not explicit, however taking into account that the two-part test is not cumulative,¹⁵² the tribunal decide on jurisdiction after answering the first question. In

¹⁴⁸Statement of the Ministry of Foreign Affairs of Ukraine on the Initiation of Arbitration against the Russian Federation under the United Nations Convention on the Law of the Sea, the Ministry of Foreign Affairs of Ukraine official website, 14.09.2016, <http://mfa.gov.ua/en/press-center/news/50813-zajava-mzs-ukrajini-shhodo-porushennya-arbitrazhnogoprovadzhennya-proti-rosijsykoji-federaciji-vidpovidno-do-konvenciji-on-z-morsykiego-prava> . (date of access - 26.11.2019)

¹⁴⁹ The Foreign Ministry explains why Ukraine does not file a lawsuit with the UN international court on the return of Crimea, 17, 2017, UNIAN: <https://www.unian.net/politics/1729092-v-mid-obyyasnili-pochemu-ukraina-ne-podaet-isk-v-mejdunarodnyiy-sud-on-po-vozvrashcheniyu-kryima.html> (date of access - 26.11.2019)

¹⁵⁰ Russia Violates Maritime Law by Exploring Annexed Part of Azov Sea Shelf Border Guards, UNIAN (17.11.2016), <https://www.unian.info/politics/1629516-russia-violatesmaritime-law-by-exploring-annexed-part-of-azov-sea-shelf-border-guards.html>. (date of access - 26.11.2019)

¹⁵¹ South China Sea Arbitration, Award on Jurisdiction and Admissibility, 153

¹⁵² Ibid.

this context, the possibility of the tribunal reaching the conclusion that it lacks jurisdiction over the dispute is not excluded.

Another possible scenario is that Ukraine has an option to deny the legitimate legal dispute regarding sovereignty over the Crimean Peninsula. Ukraine may assert that there is solely actual legal dispute for the LOS tribunal concerns the intervention of Russia in Ukraine rights in the maritime zones adjacent to the Crimean Peninsula because the sovereignty of Ukraine over it is a factual matter. Previously Ukraine stated that Russia violated both the principle of territorial integrity and the prohibition on the use of force and the principle of territorial integrity by its annexing Crimea.¹⁵³ Accordingly, facts that emanate from wrongful conduct cannot establish the law in accordance with the principle of *ex injuria ius non oritur*.¹⁵⁴ Furthermore, the referendum regarding sovereignty in Crimea is regarded void by the Chair of the Organization for Security and Co-operation in Europe,¹⁵⁵ the Venice Commission,¹⁵⁶ and the Chair of the Organization for Security and Co-operation in Europe.¹⁵⁷ Furthermore, The UN General Assembly emphasizes that 'the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or the city of Sevastopol'.¹⁵⁸

¹⁵³ U.N. GAOR, 68th Sess., 80th plen. mtg. at 1-3, U.N. Doc. A/68/PV.80 (Mar. 27, 2014).

¹⁵⁴ Gabgikovo-Nagymaros Project (Hung./Slovk.), Judgment, 1997 I.C.J. Reports, 88, 1 133

¹⁵⁵ Organization for Security and Co-operation in Europe, OSCE Chair Says Crimean Referendum in its Current Form is Illegal and Calls for Alternative Ways to Address the Crimean Issue (Mar. 11, 2014), <http://www.osce.org/cio/116313>.

¹⁵⁶ European Commission for Democracy Through Law (Venice Commission), Opinion on "Whether the Decision Taken By the Supreme Council of the Autonomous Republic of Crimea in Ukraine to Organise a Referendum Becoming a Constituent Territory of the Russian Federation or Restoring Crimea's 1992 Constitution is Compatible with Constitutional Principles," 27-28, Opinion No. 762/2014 (Mar. 21, 2014).

¹⁵⁷ Organization for Security and Co-operation in Europe, OSCE Chair Says Crimean Referendum in its Current Form is Illegal and Calls for Alternative Ways to Address the Crimean Issue (Mar. 11, 2014), <http://www.osce.org/cio/116313>.

¹⁵⁸ G.A. Res. 68/262, Territorial Integrity of Ukraine, U.N. Doc. A/RES/68/262 (Mar. 27, 2014).

On the other hand, Russian Federation can refer to the treaties which can try to exclude the tribunal's jurisdiction under Article 281(1) of the United Nations Convention on the Law of the Sea : the 2003 Treaty Between Ukraine and the Russian Federation on the Ukrainian-Russian State Border,¹⁵⁹ and the 2003 Treaty Between the Russian Federation and Ukraine on Cooperation in the Use of the Sea of Azov and the Strait of Kerch.¹⁶⁰ Mentioned treaties are legally binding instruments that contain binding agreements to settle certain disputes in a certain manner.

Moreover, Ukraine v. Russia tribunal could create for itself the best test for resolving the dispute, based on its specificity and do not the approaches of the Chagos case and South China Sea case. Since there is no established tradition regarding mixed disputes related to sovereignty over land, the tribunal has a lot of room for interpretation of the Convention and a not numerous case law.

4.4. Main factors which have an impact on the determination of jurisdiction in mixed disputes

The position of the LOS tribunals regarding mixed disputes related to disputed sovereignty on land can be traced in the an Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland and An Arbitration before an arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People's Republic of China.

¹⁵⁹ Treaty Between Ukraine and the Russian Federation on the Ukrainian-Russian State Border, Kiev, 28.01.2003 e.i.f. 23.04.2004. According to Article 5, the settlement of issues related to adjacent maritime spaces is carried out by agreement between the parties in accordance with international law.

¹⁶⁰ Treaty Between the Russian Federation and the Ukraine on Cooperation in the Use of the Sea of Azov and the Strait of Kerch, Kerch, 24.12.2003 e.i.f. 23.04.2004. In accordance with Article 4, disputes between the parties related to the interpretation and application of this agreement shall be resolved through consultations and negotiations, as well as other peaceful means at the choice of the parties.

The two decisions of the tribunal for the first two disputes have some similar features in the tests. Both decisions implied two conditions for determining jurisdiction, but the method used in the Chagos case was developed in the South China Sea case.

Some logical connection between the second question in the Chagos case (“to what extent does Article 288 (1) permit a tribunal to determine issues of disputed land sovereignty as a necessary precondition to a determination of rights and duties in the adjacent sea?”) ¹⁶¹ and the first condition in the South China Sea case (The tribunal does not have jurisdiction if “the resolution of the Philippines” claims would require the Tribunal to first render a decision on sovereignty, either expressly or implicitly”)¹⁶² can be noticed. In both cases, the tribunal considers it important to determine the need for a decision on sovereignty to resolve the dispute. However, in the first case, the tribunal asks a theoretical question, pointing to an article that defines its interpretation. A static approach is used to answer this question, the tribunal concludes that “dispute over territorial sovereignty would ever be considered to be a dispute“ concerning the interpretation or application of the Convention ”during The Conference¹⁶³. The only exception is disputes involving maritime boundaries and historic titles which regulated by Article 298 (1) (a) (i). In the South China Sea case, the tribunal already asserts the need to determine sovereignty before adjudicating a lawsuit as a barrier to a dispute. The task of the tribunal in this case is to determine what is the relationship between the claim and the dispute about sovereignty in a particular situation.

There is also a similarity between the first question in the Chagos case (what is the nature of the dispute encompassed in Mauritius’ First Submission?) And the second condition in the South China Sea case (the actual objective of the Philippines’ claims was to advance its position in the parties’ dispute over sovereignty). In both cases, the question is asked about a

¹⁶¹ Chagos Arbitration, Award, para 206

¹⁶² South China Sea Arbitration, Award on Jurisdiction and Admissibility, 153

¹⁶³ Chagos Arbitration, Award, para 2015.

specific situation. Moreover, in both cases the goal of the claimant country is implied. However, in the first case, a more veiled explanation (the main nature of the dispute), which is essentially determined by intention, is used, since Mauritius's previous behavior and his political ambitions are analyzed to answer this question. In the second case, the criterion is openly designated as the purpose of the claim. The second significant difference of the second decision is the presence of a new criterion - the consequences of the consideration of the claim for a dispute about sovereignty.

Another important feature of the second decision is a clear indication that in the presence of at least one of the conditions, the court does not have jurisdiction over the dispute, while in the Chagos case the court considered it necessary to consider both issues together.

Therefore, the South China Sea case decision is more detailed and clear and includes more criteria than the Chagos case decision. However, the general idea is clearly traced for determining the jurisdiction of disputes.

In a dispute between Ukraine and Russia, the decision of the tribunal will depend on the recognition of the dispute on sovereignty as legitimate, upon condition that the tribunal does not deviate from the course of previous decisions. But a new jurisdiction test is possible because there is no enduring tradition.

Therefore, if the LOS tribunal considers the jurisdiction of mixed disputes related to sovereignty over land, factors such as the need for a preliminary decision on sovereignty over land, the intention of the plaintiff party and the consequences of resolving the claim for a sovereignty dispute are taken into account. The introduction of additional criteria in subsequent decisions should not be ruled out, since the approach to determining jurisdiction

over disputes related to land is at the initial stage of the formation of both doctrine and practice.

CONCLUSIONS

The objective of the study was the establishment of factors that influence the scope of jurisdiction of the LOS court in “mixed disputes”.

Among the main scientific problems can be identified:

- the absence of not only legal, but also the generally accepted concept of “mixed dispute”;
- poor consistency in legal literature and lack of consensus regarding the approach to interpretation of the provisions of the Convention on the jurisdiction of maritime tribunals over mixed disputes;
- modest judicial practice, which is often greatly influenced by the political and diplomatic environment.

The following hypotheses were confirmed:

- In the legal literature there is no universally accepted definition of “mixed disputes”.
- LOS tribunals have developed a unified approach regarding the factors that are used to determine the jurisdiction of the court over mixed disputes.

The first chapter of the study explains the features of the dispute resolution system enshrined in the Convention through a historical excursion into the development of doctrines that laid the foundation of the treaty and modern challenges related to the application of the Conven-

tion regarding the mandatory dispute resolution procedure. This chapter is necessary for understanding the basic idea of compulsory jurisdiction, enshrined in the Convention and the place of maritime tribunals.

Throughout history separation of maritime borders has been a significant issue that requires compromises. In accordance to *Mare Liberum* doctrine, the sea is *res communis*, while the opposing *Mare Clausum* doctrine declares that the sea is in fact as capable of assignment as land territory. These doctrines moulded the basis for modern law of the sea are reflected in the United Nations Convention on the Law of the Sea .

The United Nations Convention on the Law of the Sea dispute resolution system is rightfully considered one of the most advanced and complex dispute resolution systems in contemporary international law. One of its features is the mechanism for the mandatory settlement of disputes, which is an integral part of the treaty. It envisaged the creation of three new judicial bodies. In order to ensure widespread ratification of the Convention, a compromise was developed in the form of limiting issues that could be considered under mandatory jurisdiction and a complex mechanism for choosing a tribunal for dispute resolution.

The second chapter is devoted to the analysis of the jurisdiction of VOC tribunals over land sovereignty disputes and those factors that influence its determination. In particular, the danger of forum shopping is analyzed due to the wide selection of judicial institutions, the interpretation and influence of the principle of dominance of land over the sea on modern disputes, its interaction with the Convention. This chapter helps to identify the main points that affect the jurisdiction of maritime tribunals over land sovereignty disputes and approaches to solving the problems associated with them.

The choice of a tribunal could potentially lead to forum shopping and, as a consequence, treaty overlapping and significant procedural and substantive fragmentation of international law. There are numerous remedies that were suggested, *inter alia*, an extension of the advisory jurisdiction; foundation the court of appeal or tribunal des conflicts; establishment of a preliminary ruling system, and strengthen cooperation between fora. However, these problems are not fixed by the present time. On the contrary, the case law of the LOS tribunals shows that they aim to pertain to each other's respective case-law, use similar interpretation approaches and follow the jurisprudence of other international tribunals.

LOS tribunals broadly use the Principle of Domination for the interpretation or application of both substantive matter of the sea law and other fields of public international law and indirectly established in Article 76 (1) of the United Nations Convention on the Law of the Sea . The Domination Principle which stands for the land dominates the sea is a principle of customary law so it parallels the LOSC system. This principle can be interpreted as the transfer of some sovereign rights of the state to the adjacent areas of the sea, not the complete transfer of coastal sovereignty to its territory because the impact is limited by Freedom of the seas principle. Therefore, the equilibrium between freedom and control guarantees the rule of law in the oceans.

Maritime law is governed by the United Nations Convention on the Law of the Sea , while territorial sovereignty is governed by a different body of international law that goes beyond maritime law. Most states are not prepared to consider third-party sovereignty disputes because of the sensitivity and importance of the issue, so if compulsory jurisdiction is able to influence sovereignty, the international community will react painfully.

Mandatory jurisdiction does not extend to all disputes that are related to the application or interpretation of the Convention. Namely, restrictions and exclusions of enforcement are included in Articles 297 and 298 of the United Nations Convention on the Law of the Sea . However, in certain cases, compulsory jurisdiction over maritime delimitation disputes is provided, which allows to reduce the risk in dangerous disputes where the issue is not resolved by diplomacy.

The third chapter covers the jurisdiction of maritime tribunals over mixed disputes: it analyzes the term of “mixed dispute”, the particular subjective jurisdiction of maritime tribunals in relation to maritime disputes and the doctrine of 'implied powers', which ideas are often become a theoretical aid to justify jurisdiction over mixed disputes. This chapter gives a positive answer to the first hypothesis based on the analysis of legal literature and procedural documents. Moreover, this chapter helps, on the basis of knowledge gained in the second chapter, to raise issues of the jurisdiction of the maritime tribunals, which relate directly to mixed disputes.

Mixed disputes which are characterized by a lack of clear division among the dispute related a law of the sea and other types of dispute, remain frequently occurring and controversial in LOS tribunals practice. There is no clear division among the issue concerning law of the sea and other types of issue in some disputes. Despite growing popularity of use the term “mixed dispute” in academic literature, it is not only not legal, but even does not have a well-established tradition of its interpretation by different authors. The absence of a generally accepted definition and the frequent mention of a given type of dispute demonstrates the relevance of given disputes as well as the lack of compromise. The absence of an established definition at the legal level is one of the reasons for various scientific approaches that creates the basis for conflicting judicial practice.

Another reason for the conflicting judicial practice is divergent views opinions concerning the jurisdiction *ratione materiae* of LOS Tribunals under mixed disputes. Subject matter jurisdiction depends upon two aspects: if the dispute connected to the interpretation or application of LOSC and does the dispute consists if an exception or limitation under the third section of Part XV of the Convention. However, the formulation of the matter is extremely important for the consideration regarding the jurisdiction under a particular dispute. One approach which was suggested is to assert that territorial issues in maritime disputes are fully within the jurisdiction of maritime tribunals. From another standpoint, there is a need for differentiation of the facets of mixed disputes and secession the issues directly related to the Convention in accordance with Article 298 (1) (a) (i). Therefore, the lack of transparent and detailed regulation and a generally accepted view leaves a large room for interpretation approaches.

The concept of 'implied powers' which declares that international tribunals may have competences implicitly presented under their constitutive instrument is used to determine the jurisdiction of the LOS tribunals over mixed disputes. It leaves for tribunal or court the right to consider what assessment should be taken for deciding jurisdiction under mixed dispute to the extent that territorial sovereignty issue is related to the maritime questions. A mixed dispute could be submitted to mandatory procedures if it can be resolved without the settlement of sovereignty issues. Despite the frequent application of this approach, it did not receive the status of an official doctrine for interpreting the jurisdiction of maritime tribunals.

The fourth chapter contains an analysis of the jurisdiction of the maritime tribunals over the three mixed disputes related to issues of sovereignty over land. This chapter contains an analysis of case law using theoretical information, which was discussed in the previous chapters. This chapter confirms the second hypothesis and allows us to achieve the goal of the study.

State sovereignty is a very delicate issue related to territorial sovereignty; therefore, it is inappropriate to consider the state's statement on the abolition of certain dispute settlement procedures in accordance with article 298 as more significant issues of territorial sovereignty. The awards on an Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland and An Arbitration before an arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People's Republic of China illustrate the position of LOS tribunals regarding mixed disputes which connected to terrestrial sovereignty issue.

The awards on an Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland concludes that a "minor issue of territorial sovereignty" does not always impede jurisdiction over a case if this matter considered an auxiliary part of the dispute regarding the interpretation or application of LOSC. The court found that it did not exclude that in some cases a minor issue of territorial sovereignty could be truly secondary to a dispute related to the interpretation or application of the LOSC. The tribunal question of the "coastal state" of the plaintiff as a question of sovereignty. The tribunal also noted that if a, the maritime tribunal has no jurisdiction over the maritime rights issue which constitutes a prerequisite for the ascertainment of land sovereignty question in accordance with the Monetary Gold Case and the principle of state consent.

Like the tribunal An Arbitration before an arbitral tribunal constituted under Annex VII of the United Nations Convention on Law of the Sea between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland, the tribunal An Arbitration before an arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea between the Republic of the Philippines and the People's Republic of China began its definition of its jurisdiction with an assessment of the dispute. Unlike the case of Mauritius v. The United Kingdom, the South China Sea tribunal review consists of two parts: the sub-

missions of the Philippines can be interpreted as being related to sovereignty, regardless of whether it was convinced that a resolution on sovereignty should be decided court (directly or indirectly); or the true purpose of the claims was to advance their position in a dispute over the sovereignty of the land. Applying this two-stage criterion to the facts of the case, the tribunal came to the conclusion that in order to resolve the dispute it was not necessary to first decide on sovereignty, and that the true purpose of the applicant's claims was not to advance his position in the dispute about the sovereignty of the land, therefore, the tribunal has jurisdiction over the dispute. "

According to a decision analysis concerning the jurisdiction of mixed disputes related to sovereignty over land the LOS tribunal consider the need for a preliminary decision on sovereignty over land, the intention of the plaintiff and the consequences of resolving the claim for a sovereignty dispute are taken into account. However, the tradition is not stable so the modification of criteria in future decisions are possible.

Both decisions aimed to establish the need to consider the issue regarding sovereignty as a precondition for consider the claim and the real intention of the plaintiff. However, the Award on South China Sea case is consists of additional provision (the consequence of the tribunal's decision for sovereignty issue) and more clear and detailed in comparison to Chagos case.

The decision *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait* is unpredictable, since the approach described above is not well-established. Moreover, the decision of the tribunal will depend on establishing the legitimacy of the dispute between the states.

Therefore, LOS tribunals have developed an approach to determining jurisdiction over mixed disputes that relate to land, but this will be further developed and detailed in the future.

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