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DECENTRALIZED PROLIFERATION OF INTERNATIONAL JUDICIAL BODIES

SANG WOOK DANIEL HAN*

I. INTRODUCTION

The International Court of Justice (ICJ),[1] several decades after its establishment, is not only facing a growing number of disputes,[2] but also a growing number of judicial bodies in international law. Detailed descriptions of the ICJ and other judicial bodies as well as the reasons for the proliferation and decentralization trend[3] are outside the scope of this article. Instead, the article will discuss the arguments for and against a decentralized proliferated system of international dispute settlement, especially with regard to the ICJ, the International Tribunal on the Law of the Sea (ITLOS) and the World Trade Organization (WTO) Dispute Settlement Body.

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1. The ICJ is the successor of the Permanent International Court of Justice.

2. *See* Alan Boyle, *The Proliferation of International Jurisdictions and its Implications for the Court, in* THE INTERNATIONAL COURT OF JUSTICE: PROCESS, PRACTICE AND PROCEDURE 124, 124-25 (Derek Bowett et al. eds., 1997); Richard B. Bilder, *International Dispute Settlement and the Role of International Adjudication*, 1 EMORY J. INT'L DISP. RESOL. 131, 141 (1987) (explaining reasons behind insufficiency of arbitral tribunal as an alternative to international judiciaries).

3. *See* Cesare P.R. Romano, *The Proliferation of International Judicial Bodies: The Pieces of the Puzzle*, 31 N.Y.U. J. INT'L L. & POL. 709, 729-38 (1999) (providing reasons behind occurrence of the proliferation trend).

The discussion will also involve analysis of three famous cases — *Southern Bluefin Tuna*, *Swordfish Dispute*, and *MOX Plant* — including the ECJ decision of May 2006. The article will then offer different theoretical perspectives on the issue and endeavour to make some necessary recommendations.

II. THE PEACEFUL DISPUTE SETTLEMENT JUDICIAL BODIES AND THE TREND OF PROLIFERATION

The fundamental question that underlies the subject of international law is whether the international legal order is a legal system, a loose agglomeration or anarchy. This article proceeds on the basis that it is, and ought to be, viewed as a legal and relatively coherent system.[4]

The Preamble of the United Nations (UN) Charter requires international disputes to be settled by peaceful means under the principles of justice and international law, and Article 279 of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) expressly agrees to these principles.[5] This fundamental objective ought to be kept in mind during the analysis of the proliferation of judicial bodies whose purpose is to carry out this particular objective.

In the 1990s "alone, nine international judicial tribunals and nine quasi-judicial . . . bodies" were created.[6] The main incumbent of international judicial bodies is the ICJ, which is the principal judicial organ of the UN under Article 92 of the UN Charter.[7] Two of the most notable new entrants into the field are the ITLOS, which was established under the framework of the UNCLOS to hear the Law of the Sea disputes concerning the interpretation and application of the UNCLOS and other related treaties, and the WTO Dispute Settlement Body, which deals with disputes in and arising from the WTO and its instruments. In regard to the ITLOS,[8] being a party to the UNCLOS constitutes acceptance of the

4. It is not within the scope of this article to determine this issue in any great detail.

5. However, there is no legal obligation for states to seek peaceful settlement of disputes. *See* Richard B. Bilder, *An Overview of International Dispute Settlement*, *in* INTERNATIONAL DISPUTE SETTLEMENT 3, 9 (Mary Ellen O'Connell ed., 2003) [hereinafter *Overview*]. Whether every dispute is required to be resolved is a mute point. *Id.* at 14. *But see* ANTONIO CASSESE, INTERNATIONAL LAW 217 (2001).

6. Shane Spelliscy, *The Proliferation of International Tribunals: A Chink in the Armor*, 40 COLUM. J. TRANSNAT'L L. 143, 144 (2001).

7. UN Charter art. 92.

8. *See* John E. Noyes, *The International Tribunal for the Law of the Sea*, 32 CORNELL INT'L L.J. 109, 112 (1998) (explaining possible functions of the ITLOS).

ITLOS's jurisdiction by the state parties.[9] However, the UNCLOS offers the state parties the choice of four forums to hear disputes, which include the ITLOS and the ICJ.[10] On the other hand, the WTO Dispute Settlement Body adjudicates the disputes primarily in international trade law, placing strong emphasis on the efficiency of the judgments.[11]

III. THE ADVANTAGES OF THE PROLIFERATION

Article 95 of the UN Charter states: "Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."[12]

The Charter clearly envisaged and allowed for the proliferation of, or at least the development of, international judicial tribunals. Furthermore, the fact that the state parties and the members of the UNCLOS and the WTO have accepted the establishment and the development of their own tribunals highlights the political support for proliferation rather than unification under the ICJ, or vesting the appellate standing in the ICJ.[13] It provides empirical evidence of the support behind the proliferation trend among the international community.

There are numerous advantages stemming from the proliferation of international judicial bodies. First, with the increasing availability and operation of international judicial bodies, it is more likely that states will resort to international adjudications,[14] thereby assisting the achievement of the fundamental objective—peaceful dispute settlement.[15] Also, the more frequent usage of the tribunals may mean growing respect for international law and growing deterrence effects of the law, which in turn would strengthen the international legal system as a whole.[16] For example, from the ITLOS's opening in 1996 to 2002, ten of the eleven

9. United Nations Convention on the Law of the Sea, arts. 287, 288, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397, 509-10 [hereinafter UNCLOS].

10. Boyle, *supra* note 2, at 126.

11. *See* CASSESE, *supra* note 5, at 224-25 (procedure of the WTO Dispute Settlement Body); John Merrills, *The Means of Dispute Settlement*, *in* INTERNATIONAL LAW 529, 544 (Malcolm D. Evans ed., 2003); Bernhard Jansen, *GATT/WTO Dispute-Settlement Mechanisms: An Introduction*, *in* REMEDIES IN INTERNATIONAL LAW: THE INSTITUTIONAL DILEMMA, 151, 154 (Malcolm D. Evans ed., 1998).

12. U.N. Charter art. 95.

13. Noyes, *supra* note 8, at 177.

14. Boyle, *supra* note 2, at 129.

15. Valerie Epps, *Resolution of Claims to Self-Determination: The Expansion and Creation of Dispute Settlement Mechanisms*, 10 ILSA J. INT'L & COMP. L. 377, 381-82 (2004).

16. Bilder, *supra* note 2, at 168-69.

cases it adjudicated concerned fisheries, whereas before the introduction of the ITLOS, international law witnessed only three fishery cases—two in arbitration and only one in the ICJ.[17] Some incoherency or uncertainty in international law as a result of the proliferation may be an inevitable cost for the progress towards such a fundamental objective.[18]

The proliferation signals the increasing acceptance of international adjudication and international law by states and citizens.[19] Also, more guidelines will be available to states for understanding international law when more tribunals issue more judgments and reports.[20] Furthermore, with a correlating increase in its usage, the disputes may be condensed from highly-charged political assertions into factual and legal claims, and may lead to more of an understanding between the parties in political negotiations,[21] which again would help the international community progress towards the peaceful settlement of disputes.

Second, the proliferation may be beneficial for international law in general, because the incumbent ICJ cannot deal with every international dispute efficiently and effectively. Some developed states are unwilling to utilize the ICJ as exemplified in France,[22] and as of 2001 only 63 of 189 states recognized the compulsory jurisdiction of the ICJ.[23] The ICJ is already experiencing a heavy workload[24] and it lacks funding to process all adjudications.[25] As

17. Ted L. McDorman, *An Overview of International Fisheries Disputes and the International Tribunal for the Law of the Sea, in* THE CANADIAN YEARBOOK OF INTERNATIONAL LAW 119, 120 (D.M. Mcrae et al. eds., 2002).

18. *See* Boyle, *supra* note 2, at 129; Thomas A. Mensah, *The Place of the International Tribunal for the Law of the Sea in the International System for the Peaceful Settlement of Disputes, in* THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA 21 (P. Chandrasekhara Rao et al. eds., 2001); Jonathan I. Charney, *Comment: The Implications of Expanding International Dispute Settlement Systems: The 1982 Convention on the Law of the Sea*, 90 AM. J. INT'L L. 69, 71 (1996); Spelliscy, *supra* note 6, at 150-51.

19. Charney, *supra* note 18, at 74.

20. Bilder, *supra* note 2, at 150.

21. Nsongurua J. Udombana, *An African Human Rights Court and an African Union Court: A Needful Duality or a Needless Duplication?*, 28 BROOK. J. INT'L L. 811, 812-13 (2003).

22. Boyle, *supra* note 2, at 129.

23. Udombana, *supra* note 21, at 823.

24. *See* Rosalyn Higgins, *Remedies and the International Court of Justice: An Introduction, in* REMEDIES IN INTERNATIONAL LAW: THE INSTITUTIONAL DILEMMA 1, 2-5 (Malcolm D. Evans ed., 1998) (describing problems that the ICJ experiences due to heavy workload).

25. Jonathan I. Charney, *The Impact on the International Legal System of the Growth of International Courts and Tribunals*, 31 N.Y.U. J. INT'L L. & POL. 697, 703 (1999) [hereinafter *Impact*]; Gavan Griffith, *International Dispute Resolution—The Role of the International Court of Justice at the Cusp of the Millennium, in* A CENTURY OF WAR AND PEACE: ASIA-PACIFIC PERSPECTIVES ON THE CENTENARY OF THE 1899 HAGUE PEACE CONFERENCE 59, 74 (Timothy L. H. McCormack et al. eds., 2001).

for the ICJ's procedure, it typically takes two years to file an application, twenty to thirty months for oral hearing and four to five months for judgments to be issued.[26] This cumbersome process and heavy workload of the ICJ are obstacles to state parties bringing their disputes before the prime judicial organ of the UN. However, because of the proliferation, recently established bodies present new options for parties and may lessen the heavy workload of the ICJ. For example, the ITLOS can issue a quick provisional measure under paragraphs one to four of Article 290 of the UNCLOS.[27] The WTO also provides a variety of options for the parties: the parties themselves can agree on a panel of three, the cases are to be decided in six months, and the standing Appellate Body is available within the Dispute Settlement Body.[28] Hence, the proliferation encourages parties who seek a quick resolution to bring their disputes before judicial bodies for a possible peaceful settlement.

Third, the proliferation allows wider access to international judicial bodies for private parties and international organizations. The ICJ deals with neither private parties nor international organizations because it is tied down by the state-centered "Westphalian international legal order."[29] Although the ICJ has advisory jurisdiction over an international organization, the ICJ bears a conceptual difficulty in dealing with an individual because it is unclear whether the rights and duties under international law are applicable to an individual.[30] In practice, the state parties to the ICJ will not allow an individual to bring a case against states in the ICJ.[31] However, because the new bodies were established in relatively modern times, they provide for international organizations and individuals to have access to the international dispute settlement regime.[32] For example, access to both the ITLOS and the WTO Dispute Settlement Body are not confined only to state

26. Griffith, *supra* note 25, at 73. *See id.* at 78 (suggestions for increasing efficiency in the ICJ internal procedure).

27. *See* McDorman, *supra* note 17, at 146 (efficiency of the ITLOS).

28. Gerhard Liobl, *International Economic Law*, *in* INTERNATIONAL LAW 705-06 (Malcolm D. Evans ed., 2003).

29. *See* Higgins, *supra* note 24, at 1-2. In the "Westphalian international legal order," which emerged from the Peace of Westphalia in 1648 after the end of the Thirty Years War, states are the sole legitimate subjects and actors of international law. A. Claire Cutler, *Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy*, 27 Rev. of Int'l Studies 133, 134 (2001). State sovereignty is deemed as the fundamental ordering principle, *id.* at 135 (citing Hedley Bull, *The Anarchical Society: A Study of order in World Politics* (London: Macmillan, 1977)) and "positive acts of sovereign consent, evidenced explicitly in treaty law and implicitly in customary international law" provide a foundation for international law. *Id.* at 135.

30. *See* Higgins, *supra* note 24 at 1.

31. *Id.*

32. Mensah, *supra* note 18, at 30.

parties.[33] The ITLOS goes further and allows some limited access to individuals.[34] Even though the limited right of access to the ITLOS faces criticism for its very narrow scope,[35] there are other international judicial bodies that grant access to individuals,[36] and there is a high chance that a continuing proliferation movement will produce more judicial bodies that will give freer access for non-state parties to the justice system in the international legal context.

Fourth, international law in general may benefit from the proliferation movement because it offers more chances to develop its rules and principles. With more judicial bodies and adjudications available, more international issues and disputes will be resolved by the use of international law. International law will develop as a whole notwithstanding the risk of erosion of uniformity of law.[37] The new tribunals and judicial bodies provide ample opportunities to address the matters learnt and improve from the past experience of the ICJ,[38] and the experiment and exploration of new areas and ideas in the international legal domain may be more frequent.[39] Moreover, the judgments and reports of these tribunals will provide more evidence to find contemporary international law.[40] A larger number of international judicial adjudications may lead not only to improvement in the quality of judgments and reports as different tribunal decisions can be compared and criticized,[41] but also to the tribunals trying harder to issue better-reasoned judgments and reports.[42]

Fifth, in response to a claim that the proliferation could lead to a risk of fragmentation of international law, the advocates for the

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33. The WTO Dispute Settlement Body allows non-governmental organizations to submit written submissions on the disputes between Member States. *See* Appellate Body Report, United States—Import Prohibition of Certain Shrimp and Shrimp Products, 2-7, WT/DS58/R (Oct. 22, 2001); Appellate Body Report, European Communities—Meausres Affecting Asbestos and Asbestos-Containing Products, 9-14, WT/DS135/AB/R (Mar. 12, 2001). *See generally* Asif H. Qureshi, *Extraterritorial Shrimps, NGOs and the WTO Appellate Body*, 48 INT'L & COMP. L. Q. 199 (1999); Gabrielle Marceau and Matthew Stilwell, *Practical Suggestions for Amicus Curiae Briefs before WTO adjudicating Bodies*, 4 J. INT'L ECON. L. 155 (2001).

34. UNCLOS, *supra* note 9, at Annex VI, art. 20.

35. ITLOS applies only to disputes "arising out of the interpretation or implementation of contractual obligations or acts or omissions of a party to a contract relating to activities in a defined 'Area.'" Romano, *supra* note 3, at 744-45.

36. The European Court of Human Rights is an example.

37. *Impact*, *supra* note 25, at 704.

38. Boyle, *supra* note 2, at 129.

39. Campbell McLachlan, *Reflections from the Practice of International Litigation, in* INTERNATIONAL LAW 15, 20 (Malcolm D. Evans ed., 2003); *Impact*, *supra* note 25, at 700.

40. Charney, *supra* note 18, at 74.

41. Spelliscy, *supra* note 6, at 152.

42. CASSESE, *supra* note 5, at 219-20.

proliferation argue that there will be an implied understanding that the decisions of different tribunals will not be in complete opposition to each other, but rather feed off each other and help international law in general to develop in a coherent way.[43] The advocates argue that ICJ opinions are respected by other tribunals.[44] For example, in the 1998 case on *EC Measures Concerning Meat and Meat Products (Hormones)*,[45] the Appellate Body of the WTO referred to the recent judgment of the ICJ in the *Gobcikovo-Nagymaros Project Case*[46] while dealing with the issue of whether the precautionary principle constitutes a part of general international law.[47] However, there is no guarantee that other tribunals will closely follow ICJ judgments.

It is also argued that because only the ICJ has general jurisdiction, only the ICJ may primarily deal with matters of general international law, which would minimize the risk of issuance of different opinions on such general topics.[48] This point raises a question about the exact scope of "general international law." It may be true that the ICJ never stood alone but has been standing together with ad-hoc tribunals and arbitrations before the beginning of the proliferation trend. However, the proliferation increased the risks of fragmentation because of the substantially heavier weight the newly established judicial bodies attract compared to the mere ad-hoc tribunals and arbitrations.

Another argument proliferation advocates rely on is that the new bodies have installed mechanisms to ensure some degree of coherency in international law. For example, by virtue of Article 282 of the UNCLOS, existing compulsory procedures under other treaties prevail over the ITLOS"[49] and even when the parties have accepted the jurisdiction of the ITLOS under Article 287, the parties can still seek other tribunals to resolve the dispute.[50] The ITLOS is also keen on developing cooperation links with other judicial bodies.[51] However, in my opinion, this particular Article

43. Boyle, *supra* note 2, at 130.

44. *Impact*, *supra* note 25, at 699.

45. Appellate Body Report, *European Communities—Measures Concerning Meat and Meat Products*, WT/DS26/AB/R, WT/DS48/AB/R (Jan. 16, 1998) [hereinafter EC Measures].

46. The Gabcikovo-Nagymaros Project (Hung. v. Slovk.), 1997 I.C.J. 7, 58-68 (Sept. 25).

47. EC Measures, *supra* note 44, at ¶ 123, n.93 quoted in Pierre-Marie Dupuy, *The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice*, 31 N.Y.U. J. INT'L L. & POL. 791, 807 (1999).

48. *Impact*, *supra* note 25, at 705-06.

49. Boyle, *supra* note 2, at 126.

50. Mensah, *supra* note 18, at 25.

51. *See* David Anderson, *The International Tribunal for the Law of the Sea*, *in* REMEDIES IN INTERNATIONAL LAW: THE INSTITUTIONAL DILEMMA 71, 72-73 (Malcolm D. Evans ed., 1998) (identifying the close relationship between the UN and the ITLOS).

merely offers its parties a choice as to the selection of a tribunal. It still does not vitiate the risk of the ITLOS panel issuing a different view on a relevant legal topic from that of the ICJ or other judicial bodies.

There is a rather naïve belief among the advocates that because all the judicial members hold common views on the nature, role and importance of international law, they will share the standard method of treaty interpretation, resulting in minimal fragmentation.[52] However, the fact that international lawyers share the same analytical skills and background may not provide sufficient assurance given the importance of the issue at hand. Often rhetoric and reality have a wide gap between them,[53] and a weakness of the advocates' belief is illuminated when one considers how a domestic legal community reaches different views and conclusions on many legal issues in the domestic sphere, despite their perceived common views and standard methods of interpreting the law.

Sixth, the proliferation of international judicial bodies is necessary to cope with the increasing trend of decentralization and the growing complexity of an international society. As international society grows more complex, international obligations are becoming more burdensome. The proliferation of international tribunals may help to efficiently control and implement those increasing number of obligations.[54] In my opinion, the effectiveness of tribunal judgments to spur the state parties to oblige with their duties or deter their breach is unclear, and hence this particular point may not be so strong.

Seventh, the proliferation has positive impacts on international law because new and developing areas in international law need specialized expertise.[55] For example, trade disputes are often complex as they usually involve diverse economic and political factors.[56] Also, the frequency and complexity of marine issues are rising, such as conservation and management of living resources, exploration of mineral resources, and pollution. The ITLOS manifests intent to ensure special expertise is utilized in some complex areas, such as compulsory jurisdiction of the ITLOS Seabed Disputes Chamber under the Part XI, Section 5, Article 187 of the UNCLOS.[57] Some critics argue that the narrow specialization of

52. Noyes, *supra* note 8, at 176.
53. Merrills, *supra* note 11, at 554.
54. Dupuy, *supra* note 46, at 795-96; Spelliscy, *supra* note 6, at 150.
55. Spelliscy, *supra* note 6, at 149.
56. Merrills, *supra* note 11, at 544.
57. UNCLOS, *supra* note 9, at art. 187.

judges may not be beneficial, but an answer is provided in an example of the Law of the Sea issues where judges cannot be narrow specialists because the issues often traverse over a wide area such as torts committed and contracts breached over the sea as well as traditional marine issues.[58]

Lastly, the advocates argue that the proliferation helps establish regional tribunals that can handle regional problems, as exemplified by the Badinter Commission in Europe.[59] Local tribunals may understand local requirements better than general tribunals.[60] For example, in the *Asylum case*,[61] the South American states complained "that the local tradition of asylum in an embassy was not properly understood by what was then a predominantly European" ICJ.[62] However, in my opinion, the argument can go the opposite way, as a local court may be prejudicial and less objective in its approach to the case. For example, in the *Beagle Channel case*,[63] the counsel from both sides agreed that no judge or arbitrator should be from Latin America because the subject of the case was well-known locally and had been debated for more than eighty years between Chile and Argentina.[64]

58. Boyle, *supra* note 2, at 130.

59. Sir Robert Y. Jennings, *The Proliferation of Adjudicatory Bodies: Dangers and Possible Answers*, *in* INTERNATIONAL DISPUTE SETTLEMENT 441 (Mary Ellen O'Connell ed., 2003).

60. *See* Udombana, *supra* note 21, at 814-16 (describing proliferation in Africa); Jennings, *supra* note 58, at 442.

61. Asylum Case (Colom. v. Peru), 1950 I.C.J. 266, 277 (Nov. 20).

62. Jennings, *supra* note 58, at 442.

63. *See* Mark Laudy, *The Vatican Mediation of the Beagle Channel Dispute: Crisis Intervention and Forum Building*, *in* CARNEGIE COMMISSION ON PREVENTING DEADLY CONFLICT, *available at* http://wwics.si.edu/subsites/ccpdc/pubs/words/11.pdf.

64. Jennings, *supra* note 58, at 442.

IV. THE DISADVANTAGES OF PROLIFERATION

The first disadvantage or risk stemming from the proliferation is conflicting jurisdiction. Conflicting jurisdiction is a situation where one party refers a case to one international judicial body and the other party refers the same case to a different international judicial body.[65] The possibility of overlapping jurisdiction between the ICJ and the ITLOS, or between different judicial bodies, may be significant, as the exact scope of Law of the Sea disputes, which the ITLOS purports to deal with, is ambiguous.[66] UNCLOS leaves some room for the possibility of conflicting jurisdiction. If the dispute concerns the interpretation or application of an international agreement, and if the agreement confers jurisdiction to the Tribunal with regard to the particular dispute, then the ITLOS can deal with a case that does not require the interpretation or application of the UNCLOS.[67] For the ITLOS to adjudicate the case, it is sufficient for the dispute to relate to the wide purposes of the UNCLOS under paragraph two of Article 288 of the UNCLOS.[68] Also, under Article 293 of the UNCLOS, courts "with jurisdiction under the Convention are to apply both its terms 'and other rules of international law not incompatible with the Convention."[69] Hence, the ITLOS is capable of dealing not only with the Law of the Sea, but also other rules of international law.[70]

The ITLOS provides some safeguards against this concern. "Article 287 of the UNCLOS grants jurisdiction to an arbitral tribunal unless the parties agree on another forum, and Articles 290 and 292 vest the ITLOS with residual compulsory jurisdiction with respect to provisional measures and prompt release cases."[71]

A situation of conflicting jurisdiction creates confusion and uncertainty as to who ought to adjudicate the case, and may further lead to the following two disadvantages: forum shopping and fragmentation. The state parties may indulge in forum shopping between different judicial bodies.[72] It may lead to excessive adjudications thereby incurring unnecessary waste in terms of time and

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65. PHILIPPE SANDS & PIERRE KLEIN, BOWETT'S LAW OF INTERNATIONAL INSTITUTIONS ¶ 13-203 (2001).

66. Boyle, *supra* note 2, at 127.

67. *See* UNCLOS, *supra* note 9, at art. 288, ¶ 2.

68. *See id.*

69. Anderson, *supra* note 50, at 75.

70. *Id.*

71. Noyes, *supra* note 8, at 177.

72. Marianne P. Gaertner, *The Dispute Settlement Provisions of the Convention on the Law of the Sea: Critique and Alternatives to the International Tribunal for the Law of the Sea*, 19 SAN DIEGO L. REV. 577, 593 (1982).

cost. However, some degree of forum shopping is common in transnational litigation, and it may be reasonably expected that the relevant tribunal would refuse to hear the case if the case has already been adjudicated by another tribunal or given significant weight to that particular tribunal's opinions.[73] Also, forum shopping in a horizontal system of international law may not necessarily have a negative impact as long as the relevant judicial bodies keep their views on law coherent and intact. Moreover, the flip side of forum shopping may mean more diversity and options available for its users, and the prospect of a series of legal battles in different forums may persuade the relevant parties to seek diplomatic peaceful resolution of a dispute.

The third and most serious disadvantage to international law as a result of the proliferation of judicial bodies is the fragmentation of international law with each judicial body issuing multiple interpretations on the same legal point.[74] The problem lies in the fact that proliferation has occurred without any structure guiding the relationship between these entities.[75] Each tribunal exists formally distinct from each other without any hierarchy or form of relationship.[76] Hence, if each tribunal interprets or enunciates the law differently from each other, the very essence of a normative system of law may be lost. For example, under Article 293 of the UNCLOS, "[i]t seems . . . that . . . the parties could agree to ask [the ILOS] to decide a case on the basis of customary international law,"[77] and a WTO instrument expressly states that the Dispute Settlement Body is to follow customary international law.[78] Therefore, there may be a serious risk of other judicial bodies finding and interpreting customary international law differently from that of the ICJ.

There are two cases that support the existence of this particular risk. The first case, *Loizidou v. Turkey*,[79] deals with a jurisdictional point, where the Strasbourg Court of Human Rights, exam-

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73. *See* Donald R. Rothwell, *Building on the Strengths and Addressing the Challenges: The Role of Law of the Sea Institutions*, 35 OCEAN DEVELOPMENT & INTERNATIONAL LAW, 131, 147 (2004) (suggesting the institution of a international forum non conveniens concept against international forum shopping).

74. *See* Martti Koskenniemi, Harvard Presentation on Global Legal Pluralism: Multiple Regimes and Multiple Modes of Thought, 6-7, (March 5, 2005), *available at* http://www.valt.helsinki.fi/blogs/eci/PluralismHarvard.pdf (discussing three types of fragmentation of international law).

75. Spelliscy, *supra* note 6, at 143.

76. *Id.* at 144-45.

77. Boyle, *supra* note 2, at 127.

78. Understanding on Rules and Procedures Governing the Settlement of Disputes, Dec. 15, 1993, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, art. 3.2, Annex 2, MTN/FA II-A2.

79. Loizidou v. Turkey, 310 Eur. Ct. H.R. (ser. A) 99 (1995).

ining the optional clause in the relevant Convention, which was word for word based on Article 36(2) of the Statute of the ICJ, reached a conclusion opposite from the ICJ on the issue of the possibility of the severance of a reservation made by the state parties.[80]

The second example case is the *Tadic Case*[81] by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY). The ICTY explicitly held that the ICJ was wrong about the law of state responsibility, which was enunciated by the ICJ in the *Nicaragua Case*.[82] The ICTY "replaced the standard of 'effective control' as the rule governing the accountability of foreign states over [actions] . . . in civil war . . . with the wider standard of 'overall control'."[83] In doing so, the ICTY sought to increase the chance of high officials of the relevant state being prosecuted and punished for crimes committed by their government during a civil war.[84] These two cases reveal that some tribunals value improvement in the law as more important than the need for consistency with other tribunals' views on the law.

V. CASE ANALYSIS

There are three valuable examples—*Southern Bluefin Tuna*, *Swordfish Dispute*, and *MOX Plant*—that portray the risks mentioned above. A brief outline of each case will be followed by its implications for a debate on the proliferation of international judicial bodies.

A. Southern Bluefin Tuna Case

Southern Bluefin Tuna (SBT) [85] demonstrates the risk of conflicting jurisdiction. *SBT* pitted jurisdiction of the ITLOS against jurisdiction of a dispute resolution regime under Article 16 of the Convention for the Conservation of Southern Bluefin Tuna

80. Jennings, *supra* note 58, at 444-45.

81. Prosecutor v. Tadic, Case No. IT-94-1-A, Judgment, ¶ 137 (July 15, 1999).

82. *Id.*; Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14, ¶ 172-210 (June 27); Spelliscy, *supra* note 6, at 159-70. *See* Martti Koskenniemi, *What is International Law For?*, *in* INTERNATIONAL LAW 109 (Malcolm D. Evans ed., 2003).

83. Koskenniemi, *supra* note 73, at 6.

84. Prosecutor v. Tardic, Case No. IT-94-1-A, Judgment, ¶ 122 (July 15, 1999); Koskenniemi, *supra* note 73, at 6.

85. Southern Bluefin Tuna Case (Austl. & N.Z. v. Japan), Requests for Provisional Measures, 38 I.L.M. 1624, ITLOS, Case Nos. 3 and 4 (Order of Aug. 27, 1999), *available at* http://www.itlos.org/start2_en.html.

(CCSBT).[86] When Australian and New Zealand brought their fellow CCSBT party, Japan, before the ITLOS seeking a provisional measure against Japan, the ITLOS deemed prima facie jurisdiction existed.[87] However, a subsequent UNCLOS Arbitral Tribunal overturned the decision based on a jurisdictional point as it held that Article 16 of the CCSBT implicitly excludes any further dispute resolution procedure outside the CCSBT.[88] There are several criticisms aimed at the decision of the Tribunal. Boyle criticizes the Tribunal's interpretation of Article 16 of the CCSBT[89] and Article 281 of the UNCLOS.[90] Sturtz, who makes a criticism of a broader nature, criticizes the Tribunal's excessive deference to other conventions and treaties.[91]

The ITLOS majority's treatment of the precautionary principle deserves some attention. Whether the precautionary principle is a part of customary international law is unclear. Morgan points out that while the minority read the principle into the text of the UNCLOS,[92] the majority did not clarify whether it adopts the minority's point of view.[93] Morgan seems to imply that this creates confusion as to the content of international law. However, in regard to the risks stemming from proliferation, the majority's approach may be beneficial—the majority has succeeded in avoiding the risk of being explicitly divergent from the traditional orthodox view on the status of the principle when it is still an evenly balanced and hotly debated issue. Moreover, confusion over the principle already existed at the time of this decision.

In an unrelated topic, the *SBT* indicates that an occurrence of conflicting jurisdictions between different judicial bodies or dispute resolution regimes as a result of proliferation is not such a threat-

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86. Convention for the Conservation of Southern Bluefin Tuna, May 10, 1993, 1819 U.N.T.S. 360.

87. Southern Bluefin Tuna Case, *supra* note 84, at 15-18.

88. Southern Bluefin Tuna Case (Austl. & N.Z. v. Japan), Award on Jurisdiction and Admissibility, 39 I.L.M. 1359, ITLOS (Aug. 4, 2000), *available at* http://www.intfish.net/cases/fisheries/sbt2/award.pdf. *See generally* Donald J. Morgan, *Implications of the Proliferation of International Legal Fora: The Example of the Southern Bluefin Tuna Cases*, 43 HARV. INT'L L.J. 541 (2002) (providing a detailed reasoning of the Arbitral Tribunal on a jurisdictional point); Jacqueline Peel, *A Paper Umbrella which Dissolves in the Rain? The Future for Resolving Fisheries Disputes under UNCLOS in the Aftermath of the Southern Bluefin Tuna Arbitration*, 3 MELB. J. INT'L L. 53, 63-66 (2002).

89. Alan Boyle, *Decisions of International Tribunals*, 50 INTL' & COMP. L.Q. 447, 449 (Malcolm D. Evans ed., 2001).

90. *Id.* at 449-50.

91. Leah Sturtz, *Southern Bluefin Tuna Case: Australia and New Zealand v. Japan*, 28 ECOLOGY L.Q. 455, 466 (2001).

92. Southern Bluefin Tuna Cases (Austl. & N.Z. v. Japan), Requests for Provisional Measures, 38 I.L.M. 1624, ITLOS, Case Nos. 3 and 4, ¶¶ 11-20 (Order of Aug. 27, 1999) (separate opinion of Judge Laing), *available at* http://www.itlos.org/start2_en.html; *Id.* at ¶¶ 8-11(separate opinion of Judge Treves).

93. Morgan, *supra* note 87, at 547.

ening risk to international law. It is not a risk because the mere process of going through a dispute resolution regime is helpful for the participating states to achieve the ultimate aim of international law—peaceful settlement of disputes. Mansfield, a high ranking official in the New Zealand government during the *SBT* saga, presents several reasons for this argument.[94] If a dispute is submitted to an international judicial body, it grabs the attention of high level government officials, offers a chance to view issues in a broader context and from another party's point of view, involves the third party as a moderator, and offers a relatively level playing field.[95]

Mansfield further opines that even if the UNCLOS Arbitral Tribunal held that it had jurisdiction, it was unlikely that the case would have gone to a merit hearing and would have simply given impetus to negotiation.[96] In my opinion, this particular effect of the international dispute resolution regime, supported by Mansfield's observation, highlights the fact that proliferation may not reduce the international dispute resolution regime's beneficial impact in terms of positive diplomatic influence. However, if problems of fragmentation and conflicting jurisdictions escalate, it may damage respect for international law and its judicial bodies, which in turn may reduce the diplomatic and political effectiveness of the dispute resolution regime. Therefore, it is important to be vigilant against the potential risks of proliferation in this regard.

B. Swordfish Dispute

The *Swordfish Dispute* was about a potential confrontation between jurisdiction of the ITLOS and jurisdiction of the WTO Dispute Settlement Body.[97] In April 2000, the EU brought Chile before the WTO Dispute Settlement Body claiming that a Chilean statute, which prevents a ship from docking in Chilean ports when its catches exceed what is allowed under Chilean law, is discriminatory.[98] In December 2000, Chile brought the EU before the ITLOS claiming that the EU breached the UNCLOS.[99] The confron-

94. Bill Mansfield, Letter to the Editor, *The Southern Bluefin Tuna Arbitration: Comments on Professor Barbara Kwiatkowska's Article*, 16 INT'L J. MARINE & COASTAL L. 361, 362 (2001).

95. *Id.* at 363-64.

96. *Id.* at 365.

97. John Shamsey, *ITLOS vs. Goliath: The International Tribunal for the Law of the Sea Stands Tall with the Appellate Body in the Chilean-EU Swordfish Dispute*, 12 TRANSNAT'L L. CONTEMP. PROBS. 513, 520 (2002).

98. *Id.* at 519-20

99. *Id.* at 520.

tation was avoided when Chile and the EU reached a settlement in January 2001 and both hearings were subsequently cancelled.[100]

This type of dispute may be advantageous for international law in the long run. Each judicial body carries or emphasizes a different value or set of values, and a series of clashes between these different values through this type of case or dispute with conflicting jurisdiction would help to present a clearer idea about the form and content of the emerging relationship between the judicial bodies.

C. *MOX Plant Case*

MOX Plant pitted the jurisdiction of the ITLOS against jurisdiction of the European Court of Justice (ECJ).[101] In response to the United Kingdom's (UK) plan to build a MOX plant, which may be hazardous to the environment, on a coast adjacent to Ireland, Ireland brought the UK before the ITLOS asking for a provisional measure that would prevent the UK from authorizing the MOX plant.[102] The ITLOS deemed prima facie jurisdiction existed.[103] In a subsequent hearing by the UNCLOS Arbitral Tribunal, the Tribunal confirmed a previous provisional order of the ITLOS but refused to issue any more provisional orders.[104] The Tribunal was concerned about the potential jurisdictional conflict with the ECJ and decided to wait for the ECJ decision on this point.[105]

In May 2006, the ECJ held that jurisdiction of the case belongs to the ECJ, not to the ITLOS.[106] The ECJ explained that the EU Council, not individual European states, approved the UNCLOS, and exclusive competence with regard to the UNCLOS provisions on the prevention of marine pollution to the extent to which those provisions affect existing EU rules was transferred from the UNCLOS to the EU at the time of the EU's formal confirmation of the UNCLOS.[107] Hence, the relevant provisions formed a part of the

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100. *Id.* at 528.

101. The MOX Plant case (Ire. v. U.K.), Request for Provisional Measures, 41 I.L.M. 405, ITLOS, Case No. 10, (Order of Dec. 3, 2001) [hereinafter *The MOX Plant case I*]. *See* The MOX Plant Case (Ire. v. U.K.), Order No. 3, Suspension of Proceedings on Jurisdiction and Merits, and Request for Further Provisional Measures, 42 I.L.M. 1187, ITLOS, (June 24, 2003) [hereinafter *The MOX Plant case II*], *available at* http://www.pca-cpa.org/PDF/MOX%20Order%20no3.pdf; Case No. C-459/03, Comm'n v. Ireland (May 30, 2006), *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003J0459EN:HTML [hereinafter *Comm'n v. Ireland*].

102. *The MOX Plant case I*, 41 I.L.M. at 405-06.

103. *Id.* at 414.

104. *The MOX Plant case II*, 42 I.L.M. at 1199; *Comm'n v. Ireland*, at ¶ 47.

105. *Comm'n v. Ireland*, at ¶ 46. *See The MOX Plant case II*, 42 I.L.M. at 1199.

106. *Comm'n v. Ireland.* at ¶ 121.

107. *Id.* at ¶ 120-21.

European Community Treaty and legal order.[108] Given that under the EC Treaty only the ECJ is to adjudicate a dispute concerning the interpretation or application of Community law, Ireland breached European Community law by submitting a case to the ITLOS.[109] The ECJ emphasized the importance of "the jurisdictional order laid down in the [EC] Treaties and, consequently, the autonomy of the Community legal system . . . ."[110]

MOX Plant, like *SBT*, again portrays the UNCLOS Arbitral Tribunal's readiness to defer to the jurisdiction of other dispute resolution regimes or judicial bodies. The Tribunal stated:

> In the circumstances, and bearing in mind considerations of mutual respect and comity which should prevail between judicial institutions both of which may be called upon to determine rights and obligations as between two States, the Tribunal considers that it would be inappropriate for it to proceed further with hearing the Parties on the merits of the dispute in the absence of a resolution of the problems referred to [*i.e.* internal jurisdictional issue of the European Community]. Moreover, a procedure that might result in two conflicting decisions on the same issue would not be helpful to the resolution of the dispute between the Parties.[111]

This is a prime example that supports the view of proliferation advocates that judicial bodies will respect each other's jurisdiction and legal judgment—although deference to other jurisdictions was made only by a subsequent Arbitral Tribunal, not by an initial ITLOS panel, in both the *MOX Plant* and *SBT* cases. However, whether other judicial bodies like the WTO Dispute Settlement Body, the UN Human Rights Committee, or a national supreme court would yield when they are in the shoes of the Tribunal, or instead would choose to resolve the case as they see fit under their jurisdiction, is a question that remains to be seen.[112]

On the other hand, the ECJ's decision in the *MOX Plant* saga raises some questions about the future of relationship between the ITLOS and other judicial bodies like the ECJ. While the ECJ's decision seems to contribute to building a relatively clear relation-

108. *Id.*
109. *Id.* at ¶ 153.
110. *Id.* at ¶ 154.
111. *The MOX Plant case II*, 42 I.L.M at ¶ 28.
112. Koskenniemi, *supra* note 73, at 2.

ship between the ITLOS and the ECJ, risks of conflicting jurisdiction and fragmented views on law still exist. For example, it remains to be seen whether the view of the ITLOS on the scope of an EU law regarding a particular future issue would coincide with that of the ECJ.

In my view, the significance of the ECJ's decision in the *MOX Plant* saga needs to be carefully assessed because the ECJ is concerned foremost with keeping the EU legal order intact; this ought to have been a special motivating factor behind the ECJ's strong stance against the conflicting ITLOS jurisdiction. One's view as to the suitability of the ECJ's decision may depend on one's view of the EU's constitutional identity and, more importantly, the identity of international law. Although the decision may accord well with a horizontal version of international law, it may be viewed as a blow to the movement to establish a relatively vertical version of the international law regime.

VI. RESPONSE AND DISCUSSION

The advocates of proliferation have endeavored to present numerous arguments in response to the risk of fragmentation of international law as a result of the proliferation of international judicial bodies and their issuance of conflicting judgments. The first argument is that even though the ICJ has already been competing with a growing number of arbitrations, international law is still not fragmented.[113] However, this argument is weak given that the weight of the arbitral decisions and that of the precedents from international judicial bodies are usually quite different.

The second argument made by the advocates is that the divergent views expressed by different tribunals are in practice not so large as to undermine the legitimacy of international law.[114] While it is true that there have been only two cases with differing legal views from that of the ICJ on narrow legal issues, the fact that what is sufficiently "large" essentially depends on a subjective viewpoint presents serious doubts on the effectiveness of the second argument by the advocates.

The third argument by the proliferation advocates is that if different tribunals interpret the law or a treaty differently, it may not necessarily be a negative practice, because it would reveal that the law itself lacks precise content and needs improvement.[115] However, in my opinion, the revelation of the law's insufficiency is

113. Boyle, *supra* note 2, at 130.
114. Charney, *supra* note 18, at 72.
115. Noyes, *supra* note 8, at 176-77.

more of an effect of the proliferation rather than its excuse or justification as such insufficiency can be located by non-judicial research and debate. Also, international law may be better off without deviating judicial opinions and views, which would publicize its uncertainty. The last point is crucial in light of international law's reliance on acceptance by states and citizens for its authority and status.

The fourth argument is the risk of fragmentation already exists because national courts interpret international law as they deem suitable even when international courts have jurisdiction over the relevant issues.[116] However, this argument fails to take into account that interpretations of international law by national courts are usually less significant and persuasive than opinions from international judicial bodies, at least from the perspective of the state parties. In my opinion, it is not a matter of the existence or non-existence of the risk of fragmentation, but rather a matter of degree of such risk.

The fifth argument by the advocates points to domestic legal systems that are not organized in a single hierarchy but rather are relatively horizontal, as exemplified by France and the United States. These systems accommodate some fragmentation within a certain structure.[117] However, one must bear in mind the important difference between international law and domestic law.

In my opinion, through analyzing five attempted responses by the proliferation advocates, a crucial consideration is revealed: international law survives by recognition and acceptance of state actors. Without a central enforcement mechanism, the international judicial system relies on its perceived legitimacy, and its legitimacy in turn depends on whether it maintains a consistent and coherent body of law.[118] Hence, the proliferation and the resulting decentralized fragmentation of international law in general are likely to weaken the attractiveness of options available in the realm of international judicial dispute settlement in the long run.

VII. THEORETICAL PERSPECTIVES

Natural Law theorist John Finnis states that there are seven basic objective values that constitute what is good.[119] They are

116. *Id.* at 177-79.

117. Spelliscy, *supra* note 6, at 154-57.

118. *Id.*

119. The seven values given by Finnis are life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion. JOHN FINNIS, NATURAL LAW AND NATURAL RIGHTS 86-90 (1980).

recognized as good and worthy by people because we share a common human nature and morality. People exercise their reason in deciding what law they ought to obey to achieve these values. Even though the values may not be objective in that there is no identifiable initial source of such values, they may be deemed as inter-subjective values—values that cannot be reasonably denied of their worth.[120] Finnis's theory is strong in explaining what is intrinsic in law and what it offers to people to obey the law. The law offers subjects with something good, so they obey it.

Applying Finnis's Natural Law theory, it may be assumed that international law is in the process of discovering its core values. Because international law is fluid in nature, some divergences in narrow interpretations are acceptable as long as the core values are not disputed. The different tribunals will not express divergent views on core values and *jus cogens* because we share a common nature and morality in respecting those core values in the context of international law. Also, states obey international law because it offers them something good, whatever form it may take for each state. Hence, it may be inferred that some fragmentation and uncertainty resulting from a decentralized and proliferated system may not greatly hurt states' respect for international law.

On the other hand, Positivist theorist Herbert Hart states that in the structure of rules in a legal system there are primary rules of obligation, which are rules of duty or obligation, and secondary power-conferring rules, which consist of the Rules of Recognition (the rules that identify other rules which the society is willing to enforce), the Rules of Change (the rules that empower people to introduce new rules and eliminate old) and the Rules of Adjudication (the rules that decide whether the particular primary rule is broken or not).[121] Hart further claims that when the legal system has primary rules only, it will suffer three defects: uncertainty in determining the legal rules of a society, static character of its legal rules, and inefficiency in determining what constitutes a breach of the rules.[122]

Applying Hart's Westphalian Positivist theory to an international legal forum without some structural relationship between each of the decentralized tribunals, that is, without knowing how one tribunal's decision and jurisdiction fits in with another, the international legal system may not be able to identify which tribunal's rules the international society is willing to enforce, thereby suffering from the lack of, or insufficiency of, Rules of Recognition.

120. *See generally Id.* at 86-97.
121. HERBERT L. A. HART, THE CONCEPT OF LAW (2nd ed. 1994).
122. *See id.*

In turn, without such structural relationship, the international legal system will not have clear Rules of Change, that is, it cannot tell which tribunal has the power to enunciate new rules or eliminate the old rules stated by the ICJ. In such cases, the international legal system will suffer from uncertainty about the correct content of the relevant aspects of international law. The character of its international legal rules will also remain static as a change in the law enunciated by a particular tribunal may not be accepted wholeheartedly by the international society.

VIII. RECOMMENDATIONS AND CONCLUSION

A discussion of advantages and disadvantages, as well as different theoretical perspectives, fails to clearly denote the proliferation as a blessing or curse for international law. In my opinion, given the growing complexity of international society and political reality, which renders the proliferation inevitable, the real problem is not the proliferation itself, but the fact that proliferation has materialized in an environment without any formal relations between the relevant entities.[123] Hence, it may be necessary to install some form of structural relationship between the tribunals to avoid the aforementioned problems and protect the legitimacy of international law.

The first option is to vest the ICJ with the standing as the final appellate court.[124] However, such option is politically impossible. A formal revision of the Statute of the ICJ can be done only under the revision of Articles 108 and 109 of the UN Charter, which requires two-thirds majority of the UN members. Given that some states do not even accept the ICJ jurisdiction, and that one of the reasons for the proliferation was dissatisfaction with the ICJ,[125] it would be almost impossible to gain such support.[126] Such an option is also legally problematic because under Article 34(1) of the Statute of the ICJ, only states can bring a case to the ICJ.[127] Hence, non-state parties before the tribunals that deal with international organizations and private parties will not be able to bring an appeal to the ICJ.[128] Also, such an option will undermine many advantages stemming from the proliferation.[129] Moreover, impos-

123. Spillescy, *supra* note 6, at 152.
124. *See* Gaertner, *supra* note 71, at 596.
125. *See* Koskenniemi, *supra* note 73, at 12.
126. Charney, *supra* note 18, at 74.
127. ICJ Statute art. 34.
128. Jennings, *supra* note 58, at 445.
129. *Impact*, *supra* note 25, at 698.

ing a strict legal hierarchy may be difficult because international law is mired with not only legal but also diverse economic, social, and security interests and considerations.[130]

The second option of forming a new supreme court is also politically impossible for the abovementioned reason, and it is not legally attractive because if there arises only one supreme court, the usage of arbitration will grow, thereby impairing the consistent development of law.[131]

The third option is installing less formal structural relationships between the proliferating tribunals.[132] Rather than a strict formal hierarchical structure, a less formal and lateral system would allow international law to be more dynamic and flexible, which accords with the nature of international law. For example, the ITLOS's intended compulsory jurisdictional system faced its limit in *SBT* and *MOX Plant*. Defining the relationship between the tribunals in a lateral rather than a hierarchical way, such as relationships containing exception, preemption, autonomy and complementariness, would ensure that benefits of the proliferation are preserved while the potential risks are minimized.[133] At the same time, maintenance of constant dialogue between the tribunals is also a crucial element in preventing conflicting jurisdiction, legal opinions and judgments.

However, establishing and figuring out a relationship between different judicial bodies will be an immensely difficult task because it requires resolution of many tensions—between a general regime and a special regime, universalism and particularism, and general international law rule and special international law rule.[134] The establishment of a general preference of one body over another may involve the general preference of one set of values over another, which is highly unlikely to be agreed upon by the relevant participants in the foreseeable future.[135]

Hence, the final thought may be reserved for how to generate and establish these relationships. Koskenniemi suggests that international judicial bodies are "platforms" where dynamic struggle for power and influence constantly takes place.[136] It may be inferred that imposition and establishment of even lateral relationships would be almost impossible. Nevertheless, if the imposition of some form of relationship between different judicial bodies is

130. *See* Koskenniemi, *supra* note 73, at 11.
131. *See* Bilder, *supra* note 2, at 162.
132. *See* Spelliscy, *supra* note 6, at 150.
133. *Id.* at 173-74.
134. Koskenniemi, *supra* note 73, at 10-11.
135. *See id.* at 17.
136. *See id.* at 21.

almost impossible or ineffective in its operation, in my opinion it is still possible for everyone concerned to keep vigilant eyes on the emerging relationships and contribute to evaluating and influencing its course and tendency.

Therefore, it may be better to let the relationships develop through incremental aggregation of case law rather than through the imposition and establishment of a purported compulsory jurisdictional system like the ITLOS. The case law may flow as the values develop and change. The subsequent emerging relationships must be carefully assessed and criticized each time. It may be more difficult to reflect the changing values of international law through the imposition of values through formal means. For example, Peel suggests that the *SBT* saga may spur new regional fisheries agreements to adopt stricter dispute settlement procedures,[137] which in turn may gradually strengthen fisheries protection and a prima facie position of the ITLOS against other bodies or dispute resolution regimes of individual treaties in regard to this particular aspect of international law.

The efforts to maintain dialogue between each judicial body and establish some form of lateral relationships must continue. Even if the efforts prove to be futile, the least one can do is carefully observe and assess the emerging relationships and their impact on the relevant aspects of international law and the law in general. The emerging relationships ought to be vigilantly encouraged in such a way that the relative consistency and coherency of international law are kept intact. Otherwise, the authority and legitimacy of international law may hang in balance.

137. *See* Peel, *supra* note 87.